DOCUMENT RESUME

ED 395 873 SO 026 395

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|---|---|
| AUTHOR | Monk, Linda R.; And Others |
| TITLE | The First Amendment: America's Blueprint for Tolerance. Student Edition [and] Teacher's Resource. |
| INSTITUTION | Close Up Foundation, Arlington, VA. |
| SPONS AGENCY | Freedom Forum, Reston, VA. |
| PUB DATE | 95 |
| NOTE | 158p. |
| AVAILABLE FROM | Close Up Publishing, 44 Canal Center Plaza, Alexandria, VA 22314 ($7.95 plus shipping and handling). |
| PUB TYPE | Guides - Classroom Use - Instructional Materials (For Learner) (051) |
| EDRS PRICE | MF01 Plus Postage. PC Not Available from EDRS. |
| DESCRIPTORS | *Citizenship Education; Civics; *Civil Liberties; Constitutional History; *Constitutional Law; Elementary Secondary Education; Freedom of Speech; Instructional Materials; *Law Related Education; Social Studies; State Church Separation; United States History |
| IDENTIFIERS | Bill of Rights; Close Up Program; *First Amendment; *Tolerance; United States Constitution |

ABSTRACT

Designed to supplement students' study of the Bill of Rights and the First Amendment, this text can help them identify the First Amendment as a blueprint for a tolerant society. The introduction explains the purpose of the book and describes its contents. The first chapter discusses events leading to the First Amendment's creation. The chapter also demonstrates how tolerance is the Amendment's primary theme. The second, third, and fourth chapters address how specific Supreme Court cases related to freedom of religion, freedom of speech, and freedom of the press support the nation's goal of a tolerant society. The last chapter illustrates how citizens play a vital role in fostering tolerance by ensuring constitutional values within their own communities. After reading the book and discussing specific issues, students should understand that by working together, people can build a more tolerant society. The teacher's resource provides a variety of instructional activities to help teachers make use of the accompanying student text. The activities and text can be integrated into and enhance courses such as U.S. history, government, civics, and law. Each unit includes student objectives, a list of terms and concepts, and classroom activities, some of which use case studies that focus on tolerance and the First Amendment. Student handouts accompany many of the activities. (LH)

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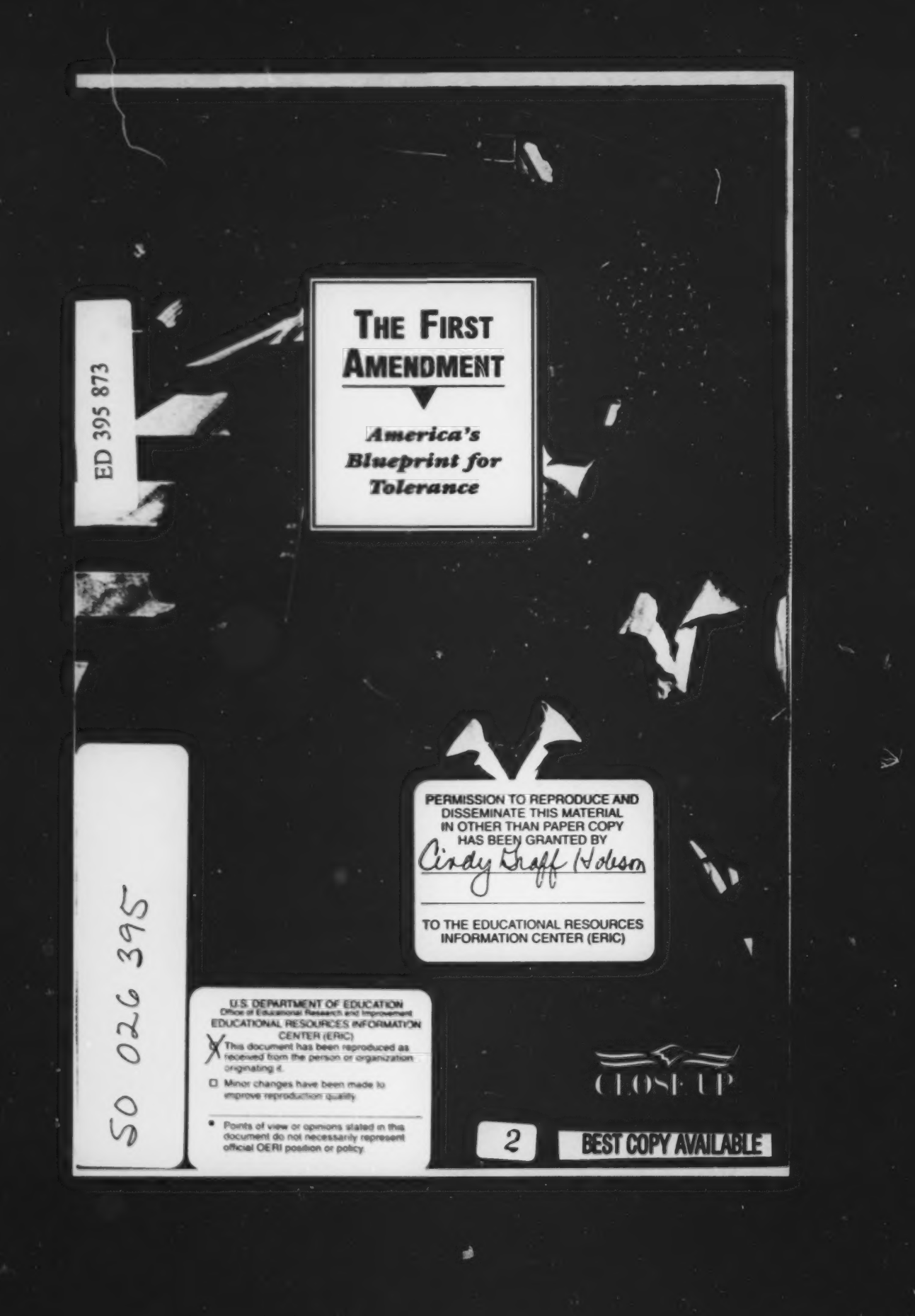

# THE FIRST AMENDMENT

## *America's Blueprint for Tolerance*

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Close Up Publishing
44 Canal Center Plaza
Alexandria, VA 22314
800-765-3131

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**Library of Congress Cataloging-in-Publication Data**

Monk, Linda R.
The First amendment : America's blueprint for tolerance / by Linda R. Monk.
p. cm.
Includes bibliographical references.
ISBN 0-932765-54-8
1. Freedom of speech—United States—Juvenile literature.
2. Freedom of religion—United States—Juvenile literature.
3. Freedom of the press—United States—Juvenile literature.
4. Toleration—Juvenile literature. [1. Freedom of speech.
2. Freedom of religion. 3. Freedom of the press. 4. Toleration.]
I. Title
KF4770.Z9M66 1995
342.7308'53—dc20
[347.302853]

94-35275
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Printed in the United States of America

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Developed with the support of: THE FREEDOM FORUM

# THE FIRST AMENDMENT

## *America's Blueprint for Tolerance*

By Linda R. Monk

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Linda R. Monk is the author of *The Bill of Rights: A User's Guide*, also published by Close Up Publishing, which won the American Bar Association's Gavel Award—its highest honor for books. A graduate of Harvard Law School with an emphasis in constitutional law, she has written numerous articles on legal issues for the *Washington Post*, the *Chicago Tribune*, the *Miami Herald*, the *St. Louis Post-Dispatch*, the *Des Moines Register*, the *Baltimore Sun*, and other newspapers nationwide.

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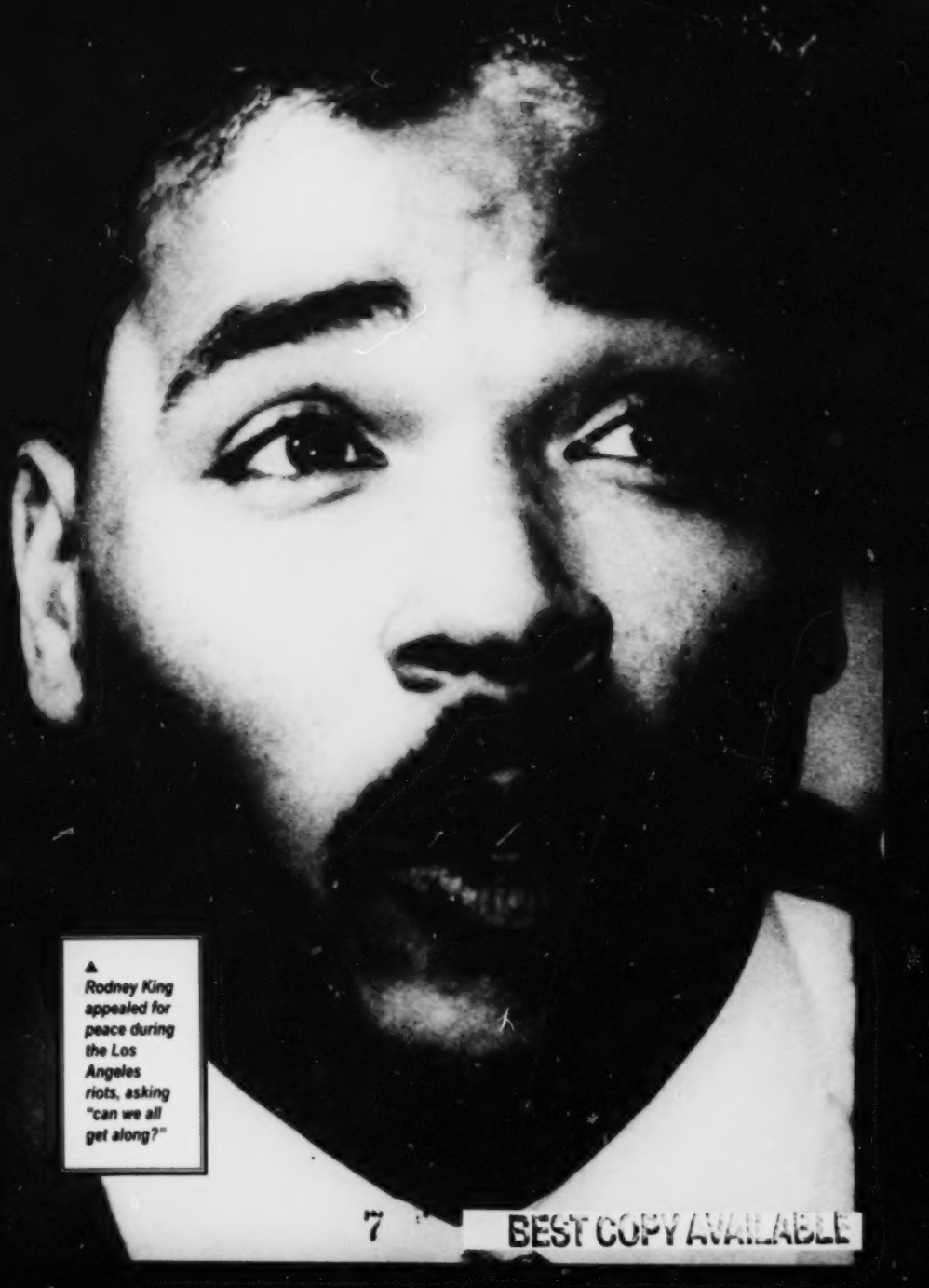

▲ Rodney King appealed for peace during the Los Angeles riots, asking "can we all get along?"



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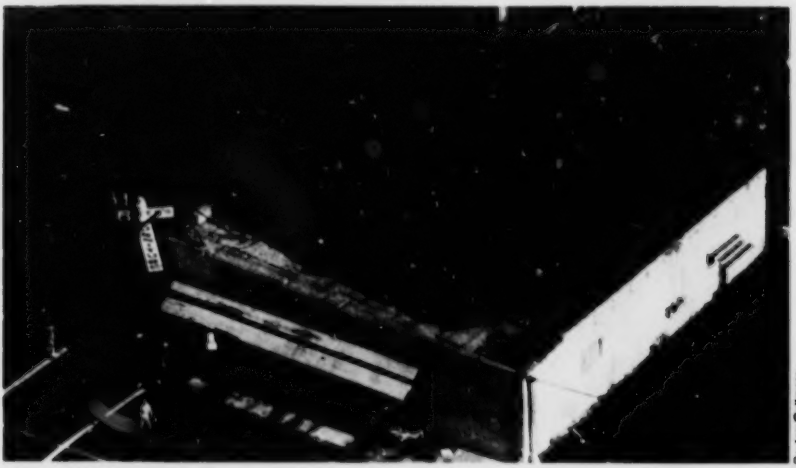
# UNITY IN DIVERSITY

"Can we all get along?" asked Rodney King during the Los Angeles riots of 1992. The beating of King, an African American, by white Los Angeles police officers after a high-speed car chase was captured on videotape in 1991. The officers' acquittal a year later sparked the worst urban riot in modern American history: more than fifty people dead and $500 million in property damage. The riot, centered in the predominantly black neighborhoods of south central Los Angeles, included many instances of racial violence and attacks on small businesses owned by Korean Americans.

From its beginnings, the United States has been composed of many peoples from many lands with many beliefs. This multicultural heritage has given America great strength, but also has caused great tension. Throughout history, many Americans have wondered with Rodney King: How can we all get along? America's challenge has been to live up to its national motto: *e pluribus unum*—"from many, one."



Reuters/Bettmann

***Many businesses in Los Angeles were burned during the riots that followed the acquittal of the police officers accused of beating Rodney King.***

Reuters/Bettmann

Although this motto originally referred to the thirteen states that made up one union, it also came to symbolize the great diversity of peoples that created one nationality: the American.

One thing that unites Americans is their belief in the importance of individual rights. Said the Commission on the Bicentennial of the United States Constitution: "America has always been about rights. . . . While many nations are based on a shared language or ethnic heritage, Americans have made rights the foundation of their national identity."

The purpose of this book is to show how the First Amendment is one answer to Rodney King's question. By protecting the right of Americans to have different beliefs and opinions, the First Amendment helps create a tolerant society. Such a society values the diversity of its members. In America, tolerance is more than just a good idea; it is required by our highest form of law, the Constitution.

▲ *The great seal of the United States features the motto* e pluribus unum*—"from many, one."*

This book explores the concept of tolerance in that constitutional context. The first chapter describes the First Amendment's creation and its history. The chapter also demonstrates how tolerance is the amendment's primary theme. The second, third, and fourth chapters address each of the First Amendment's three major rights—freedom of religion, freedom of speech, and freedom of the press—and how specific Supreme Court cases in each of these areas relate to the nation's goal of a tolerant society.

The last chapter illustrates how Americans play a vital role in fostering tolerance by ensuring constitutional values within our own communities. The information contained in *The First Amendment: America's Blueprint for Tolerance* is designed to assist citizens in this critical task. By using the First Amendment's principles as a blueprint for our daily lives, the American people can help *e pluribus unum* become not just a slogan, but a reality.

# TOLERANCE AND THE FIRST AMENDMENT

What is tolerance? A tolerant society is one in which the government cannot punish someone just for being different. It is a community in which citizens respect other people's right to have differing beliefs even if they do not share them. That is the goal of the First Amendment. In America, tolerance is not just a positive character trait or ethical stance—it is a founding principle of our constitutional government. It is part of our highest law.

> **THE FIRST AMENDMENT**
>
> *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.*

Many Americans consider the First Amendment to be the most important amendment in the Bill of Rights. It protects many rights they hold most dear: freedom of religion, freedom of speech, freedom of the press, freedom of assembly, and freedom of petition. Three of these rights, in particular, help ensure a more tolerant society—the freedoms of religion, speech, and the press. The First Amendment forbids the government to punish people merely because their beliefs are different. And it gives Americans the right to express those differing beliefs in writing and speech and in symbolic ways without fear of being punished by the government.

However, there are some limits on these rights. Generally, the government can restrict actions—even if they are related to freedom of religion or freedom of speech—that directly harm others. Some legal scholars believe that words can hurt people, too. They maintain that racist or sexist

speech should not be protected by the First Amendment. But other experts argue that if the government can limit "bad" speech that is offensive to certain groups, it can also limit "good" speech that criticizes public officials. They say that even people promoting hate and intolerance are protected by the First Amendment, but then so are the people who are hated.

## BEFORE THE FIRST AMENDMENT

Many of the colonists in early America left England because they had been punished for their beliefs. Yet when these colonists arrived in America, they often neglected to protect the very same liberties for other people that they themselves had been denied in England. They were intolerant of their American neighbors, even though they themselves had suffered intolerance in England. Nonetheless, colonial law did protect far more individual rights than did English law.

Library of Congress

▲ *Although James Madison was a reluctant supporter of the Bill of Rights, he became its principal sponsor in the first Congress.*

As part of the American Revolution, the former colonies became free and independent states. They created their own state constitutions, many of which had a separate declaration of rights. Virginia—the first colony to establish a state government—adopted a new state constitution in 1776, which began with a declaration of rights that became a model for the U.S. Bill of Rights.

The first constitution of the United States, the Articles of Confederation, created a weak national government. It did not protect individual rights, because many states believed the central government posed no threat to individuals. In 1787, problems with the ineffective national government under the Articles of Confederation finally led to a convention to draft a new charter, the Constitution of the United States.

But the new Constitution, which created a strong national government, did not have a separate bill of rights. A few rights were scattered throughout the Constitution, but many states argued that a bill of rights was still necessary. Several key states refused to ratify the Constitution unless such a list of rights was added. The promise that a bill of rights would be passed as soon as the new Congress met ensured the Constitution's ratification.

When the first Congress convened in 1789, James Madison of Virginia—the U.S. Constitution's principal author—introduced a proposed bill of rights that would be added to the Constitution. Twelve amendments passed Congress, but only ten were ratified by the states. On December 15, 1791, these first ten amendments to the Constitution—the Bill of Rights—became part of the "supreme law of the land." To many Americans, the most important amendment was the very first.

## PRINCIPLES OF THE FIRST AMENDMENT

Several general principles affect how the First Amendment is interpreted by the Supreme Court today. Among these principles are that the Bill of Rights applies to the states as well as to the federal government; restricts only government officials, not private individuals; does not guarantee absolute rights; and protects minority rights from majority rule.

**SCOPE.** When it was written, the Bill of Rights applied only to the national government, not the states—a principle upheld by the Supreme Court in 1833. Thus, only the national government was forbidden to pass laws that might interfere with those freedoms listed in the Bill of Rights. James Madison had originally proposed an amendment prohibiting the states from violating "the rights of conscience, or the freedom of the press, or the trial by jury in criminal cases." Congress

defeated the amendment, although Madison viewed it as "the most valuable amendment in the whole list."

When the Fourteenth Amendment was added to the Constitution in 1868, however, the status of the Bill of Rights regarding the states began to change. The primary author of the Fourteenth Amendment had argued that it made the Bill of Rights applicable to the states. Yet the Supreme Court waited almost thirty years before slowly extending, one by one, most of the guarantees of the Bill of Rights to the states. This process is known as "incorporation." Only through incorporation was the birth of the Bill of Rights finally complete.

Among the earliest rights incorporated by the Supreme Court were those listed in the First Amendment. This demonstrates how important the First Amendment freedoms had become to the American people. By 1947, all the rights in the First Amendment had been incorporated to apply to the states. Most of the laws that affect First Amendment rights are passed by the states, not the federal government. Therefore, the Supreme Court has heard the vast majority of its First Amendment cases only in the past fifty years—since incorporation.

**STATE ACTION.** Another important point to remember about the First Amendment is that, like the Constitution and other amendments in the Bill of Rights, it applies only to the *government* (also known as the "state"—including national, state, and local levels) or those who act under the government's authority. This principle is known as the "state action" requirement. The First Amendment applies to all actions of the government, but it does not apply to *private* actions. For instance, a private employer who forbids employees to talk on the job does not violate freedom of speech. The First Amendment says that "*Congress* shall make no law" violating those rights; it does not mention the actions of private citizens.

**LIMITATIONS ON RIGHTS.** While the opening phrase of the First Amendment says that Congress shall make *no* law regarding those rights, in practice hardly any right is absolute. Congress frequently passes laws that affect rights in the Bill of Rights. The Supreme Court then must determine whether those laws restrict individual freedom so much that they must be declared unconstitutional.

**MAJORITY RULE, MINORITY RIGHTS.** Rights take on added importance in a democracy, a form of government in which the majority rules. Madison, the primary author of the Bill of Rights as well as the Constitution, pointed out that in a democracy the real power lies with the majority—and therefore also the greatest danger of oppression. Madison worried that without some protection of individual rights, the majority could run roughshod over a minority.

Thus, the Bill of Rights is designed to protect minority rights in a system of majority rule. It is a document in which "We, the People" have agreed to limit ourselves, to say that some rights are so important that they cannot be voted on. Thus, the United States has a constitutional democracy—a government in which the people rule, but with certain limits. The Bill of Rights sets forth those limits.

One of the most important limits, as expressed in the First Amendment, is that the majority cannot punish the minority for having different beliefs. Otherwise, the only ideas allowed would be those that the majority liked. There would be no freedom of religion; everyone would have to worship the way the majority thought best. There would be no freedom of speech; messages unacceptable to the majority would not be permitted. There would be no freedom of press; newspapers and television stations opposed by the majority would be censored. If the majority could forbid all things it did not approve of, there would be no freedom.

This is what tolerance is all about—the right of people to be different from the majority. After all, the majority does not need special protection; in a democracy, the majority writes the laws. But in the United States, the majority does not always have the final say. Americans believe that tolerance of differing views is so important that we are willing to limit democracy to get it.

## AFTER THE FIRST AMENDMENT

Although the First Amendment protected many important rights, it did not address some critical injustices in early America. Slavery, for instance, was allowed under both the original Constitution and the Bill of Rights. In addition, women did not enjoy equal rights under the law. Only after the Civil War did the Constitution begin to protect equality among its citizens. The Fourteenth Amendment, ratified in 1868, guaranteed "equal protection of the laws." This phrase was over time interpreted by the Supreme Court to help eliminate discrimination not only against African Americans, but against other races and women as well.

*This man protests the actions of the Ku Klux Klan (KKK) using his right to freedom of speech.*

Renée Bouchard Photography

The First Amendment was just a beginning in the struggle for tolerance in America. It was not the end. In fact, Americans have not always lived up to the ideals expressed in the First Amendment. As mentioned earlier, states often did not protect First Amendment rights. Even at the national level, certain laws that today would clearly violate the First Amendment were enforced in the past. These laws will be discussed more fully in the following chapters.

Yet although the history of the United States under the First Amendment is not perfect, these freedoms have served as guideposts for the nation. Even people deprived of their rights have looked to the language of the First Amendment for support. When the courts and the laws have not reflected the true meaning of the First Amendment, oppressed people have worked to ensure that the amendment fully protects all Americans.

The need for individual citizens to support the spirit of the First Amendment continues to be critically important, just as it was in the past. Although the First Amendment forces the federal government to act in certain ways, it does not legally apply to citizens acting in a private capacity. Yet for tolerance to prevail in America, the First Amendment must become a blueprint for private citizens, not just the government.

Each generation makes its own contribution to the meaning of the First Amendment. What will your contribution be? Will you deny those who disagree with you their right to be heard? Or will you seek to embody the First Amendment's message of tolerance for differing views? What kind of America would you want to live in—a tolerant or an intolerant one?

# FREEDOM OF RELIGION

## *Living With Our Deepest Differences*

What if people were attacked or killed because of their religious beliefs? What if they could not vote, hold office, or own property if they did not belong to a church approved by the government? What if ministers could preach only if they were licensed by the state? How should a tolerant society deal with these issues?

The very first right mentioned in the First Amendment is freedom of religion, indicating its importance to the American people. For many Americans, religion is the source of our deepest convictions—and therefore also of our deepest differences. "Living with our deepest differences" is America's biggest challenge—according to the Williamsburg Charter Foundation, a group that promotes religious freedom. What we believe most strongly, our religious faith, is

SIGNE/Cartoonists & Writers Syndicate

also what we will often disagree about most strongly with our neighbors. But in a tolerant society, citizens respect the religious beliefs of others, even if they do not share them.

The First Amendment protects religious freedom in two ways: the Establishment Clause and the Free Exercise Clause. The Establishment Clause forbids the government from establishing an official church, formally supporting religious activities, or giving preference to religion over nonreligion. But under the Free Exercise Clause, the government also cannot interfere with the expression of religious beliefs. Sometimes these two rights conflict.

## Religious Liberty Before 1791

From colonial times through today, Great Britain has had an established church, the Church of England, that is officially supported by the government. Many of the American colonists fled England to escape persecution by its established church, yet they quickly established churches of their own when they arrived in the New World.

**Colonial Practices.** In most of colonial America, church and state were not separate. Colonies with established churches required citizens to support those churches through their taxes, regardless of their religious beliefs. Furthermore, colonists sometimes could not vote unless they belonged to a church. Colonists were also required to go to church on Sunday, and, in early Virginia, could be whipped if they failed an examination in the faith. Thus, under established religion, what was viewed as a sin was also treated as a crime.

In New England, the Puritan (or Congregational) religion was the established church. The Puritans cruelly persecuted the Quakers (or Society of Friends), who believed that each person had direct access to God and that ministers were unnecessary. In the 1600s, some Quakers had an "H" for

heresy branded on their faces with a red-hot iron. Other Quakers were mutilated by having their noses slit open, their ears cut off, and their faces scarred.

In southern colonies, the Church of England (which became the Episcopal Church after the American Revolution) was the established religion. The Church of England particularly opposed the Baptists, who preached to poor, uneducated people and even slaves—threatening the power of wealthy planters. Sheriffs and armed planters forceably broke up Baptist services. One example is the case of Brother Waller, a Baptist preacher in Virginia. In 1771, while leading his congregation in singing hymns, Waller was beaten by a posse that included the local Church of England minister and the sheriff. When Waller tried to pray, the sheriff horsewhipped him.

Only four of the thirteen colonies—Delaware, New Jersey, Pennsylvania, and Rhode Island—did not have established churches. Some colonies, such as Maryland, tolerated other religions even though they had established churches. Founded as a haven for Catholics, Maryland protected the rights of all persons "professing to believe in Jesus Christ" in its Toleration Act of 1649. But toleration was not the same as freedom of religion. The very word "toleration" (rather than tolerance) meant that religious beliefs were not a right, as in the First Amendment, but a privilege that could be taken away by the majority at any time.

One of the greatest colonial advocates of religious freedom was Roger Williams. A Puritan minister, Williams

### NO MORE TOLERATION

***The Touro Synagogue in Newport, Rhode Island, is America's oldest surviving Jewish house of worship. President George Washington wrote to the congregation in 1790: "It is now no more that toleration is spoken of, as if it was by the indulgence of one class of people that another enjoyed the exercise of their natural rights."***

Congregation Jeshuat Israel

was expelled from Massachusetts in 1635 for his controversial ideas—among them that government had no right to enforce religious laws. Instead, Williams advocated that "a permission of the most Paganish, Jewish, Turkish, or anti-Christian consciences and worships be granted to all men in all nations and countries." Williams founded the colony of Rhode Island in 1636 to guarantee religious liberty for all creeds. Also, William Penn founded the colony of Pennsylvania in 1681 as a haven for Quakers.

**THE VIRGINIA STATUTE OF RELIGIOUS LIBERTY.** By the time of the American Revolution, the idea of religious freedom was gaining momentum. Virginia, for example, moderated some of its earlier punishments against religious dissenters, although it still jailed those who denied the doctrine of the Trinity or the divinity of the Bible. Thomas Jefferson opposed such practices. Government should only penalize actions that harmed other people, he thought, not punish beliefs. "It does me no injury for my neighbor to say that there are twenty gods, or no god," Jefferson declared. "It neither picks my pocket nor breaks my leg."

### AMERICAN RELIGIOUS BELIEFS, 1780-1990

**1780**

| | |
|---|---|
| Congregational | 27.1 |
| Presbyterian | 18.2 |
| Baptist | 16.8 |
| Anglican/Episcopalian | 14.9 |
| Lutheran | 8.9 |
| German Reformed | 7.4 |
| Dutch Reformed | 4.6 |
| Catholic | 2.1 |

(percentage of churches)

Source: James A. Henretta et al., America's History (Chicago: Dorsey Press, 1987), 1:130.

**1990**

| | |
|---|---|
| Catholic | 26.2 |
| Baptist | 19.4 |
| Protestant (no denomination given) | 9.7 |
| Methodist | 8.0 |
| Lutheran | 5.2 |
| Christian (no denomination given) | 4.5 |
| Presbyterian | 2.8 |
| Jewish | 2.2 |

(percentage of population, based on random telephone survey)

Source: Barry A. Kosmin and Seymour P. Lachman, One Nation Under God: Religion in Contemporary American Society (New York: Harmony Books, 1993), 15-6.

Jefferson helped lead the struggle in Virginia for freedom of religion. Although the Virginia Declaration of Rights of 1776 included a provision for religious freedom, many prominent Virginians such as George Washington and Patrick Henry advocated a tax to support all Christian churches in the state. Thomas Jefferson and James Madison opposed the tax. Jefferson drafted a law, the Statute of Religious Liberty, to guarantee freedom of religion in Virginia. Madison wrote a famous essay that helped convince the Virginia legislature to pass Jefferson's statute in 1786.

The Virginia Statute of Religious Liberty provided the most extensive protections of religious freedom of its time. The law stated that "whereas Almighty God hath created the mind free," no person would be required to attend or support any religious services. Furthermore, the law held that Virginians could no longer be denied the right to vote and participate in government because of their religious beliefs. Thomas Jefferson was so proud of this law that he had his authorship of it, along with the Declaration of Independence, listed on his tombstone.

**RELIGION AND THE CONSTITUTION.** By the time the U.S. Constitution was written in 1787, religious freedom had gained importance at the national level. Indeed, it was one of the few individual liberties protected in the text of the original Constitution. Article VI states that "no religious test shall ever be required as a qualification to any office or public trust under the United States." Consequently, government jobs must be open to people of all faiths—or no faith.

However, many people believed that the original Constitution did not provide enough protection for religious liberty. Six of the eight states that proposed amendments to the Constitution recommended that religious freedom be included. Therefore, Madison included the Establishment Clause and the Free Exercise Clause when he proposed the Bill of Rights

in Congress. The Senate tried to weaken the language of the Establishment Clause, allowing government to aid religion in general if it did not prefer one religion over another, but Madison's original version prevailed.

## The Establishment Clause and Tolerance

Imagine a government in which church and state were not separate, like in colonial times. Imagine a country in which only Presbyterians could vote, or only Catholics could hold public office. Many nations today still have established churches that are protected by the government or control the government. Some like Great Britain allow other religious groups to practice their faith, although without government support, whereas others like Saudi Arabia are totally based on strict religious laws and do not allow dissenters.

But in the United States, the First Amendment says that "Congress shall make no law respecting an establishment of religion." This clause, or phrase, of the First Amendment is known as the Establishment Clause. It restricts the relationship between the government and the church.

Through the Establishment Clause, the First Amendment creates a nation in which all people belong, regardless of their religion. Participation in American government is not limited to those who have certain religious beliefs. Also, the U.S. government does not punish Americans for violating religious doctrines—like failing to eat kosher foods or believe in the Trinity. However, in some countries today, blasphemy (showing irreverence toward a sacred being, such as God, Muhammad, or Jesus) is still a criminal offense—and sometimes punishable by death.

Most Americans today agree that the Episcopal Church should not be the official religion of America, and that Baptists and Quakers should not be beaten for their beliefs. Beyond that, however, Americans disagree vehemently about

UPI/Bettmann

▲ *The Ayatollah Ruhollah Khomeini, a Shi'ite Muslim religious leader, ruled Iran from 1979 to 1989.*

### DEATH TO BLASPHEMERS!

*In a few Islamic countries, blasphemy is still a crime punishable by death—as it once was in the Christian world. In Pakistan, a death sentence is mandatory for anyone who "defiles the sacred name of the Holy Prophet Muhammad." On April 5, 1994, Muslim fundamentalists attacked three Christians who had been charged with blasphemy. One was killed, and a 13-year-old boy was wounded—the youngest person to be accused of blasphemy in Pakistani history. Two weeks later, a mob killed a devout Muslim doctor who had accidentally burned a page from the Koran, Islam's holy book.*

*In 1988, the Ayatollah Khomeini of Iran issued a death sentence for English author Salman Rushdie, the author of* The Satanic Verses. *Khomeini charged that Rushdie's book profaned Islam. Even after Khomeini died in 1989, Rushdie still lived in hiding to protect himself from the death threat.*

the proper relationship between government and religion. Most of these controversies arise from cases involving the Establishment Clause.

The Supreme Court did not rule on the meaning of the Establishment Clause until *Everson v. Board of Education* (1947), which incorporated the clause to apply to the states. In *Everson*, the Court ruled that the Establishment Clause forbids the government from creating, or establishing, an official church; nor can it support one religion over another, or religion over nonreligion. The Court also held that government may not participate in religious affairs nor impose taxes for their support. "In the words of Jefferson," said the Court, the Establishment Clause "was intended to erect 'a wall of separation between church and state.'"

**HOW HIGH A WALL?** But how high should the "wall of separation" be? Most public officials take their oaths of office in the name of God. Military chaplains serve every branch of the armed forces. "In God We Trust" appears on American

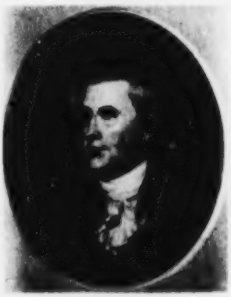
money. Sessions of Congress and of many state legislatures and city councils open with a prayer. Should these practices be prohibited by the Establishment Clause?

Some people—called separationists—say yes, arguing that the Constitution requires a strict separation between church and state. They say that America's experience in the colonial era demonstrates that if government has the power to aid religion, it also has the power to destroy it. By contrast, other people known as accommodationists believe that government must at times accommodate, or make allowances for, the role of religion in society. Otherwise, they say, government would be hostile to religion and risk violating the Free Exercise Clause. At times the Supreme Court has been more separationist about Establishment Clause issues, and at other times more accommodationist.

In the case of *Lemon v. Kurtzman* (1971), the Supreme Court set forth a three-part test for determining whether a government policy violates the Establishment Clause. Using

### A WALL OF SEPARATION

*The Danbury Baptist Association in Connecticut, who opposed the established Congregational church there, wrote to President Thomas Jefferson in 1801. Even though the First Amendment did not apply to the states, the Baptists hoped in their letter that many states would nonetheless accept Jefferson's views and abolish the established churches. In his reply to the Danbury Baptists, Jefferson wrote that the Establishment Clause erects "a wall of separation between church and state." Therefore, the Establishment Clause is often said to require "separation of church and state." Those words, however, do not actually appear in the First Amendment.*



Library of Congress

▲ ***Thomas Jefferson believed so strongly in separation of church and state that as U.S. president he refused to declare national days of thanksgiving, which he believed were religious acts.***

this test, the Supreme Court has struck down many government policies as violations of the Establishment Clause. However, Chief Justice William Rehnquist and some other members of the Supreme Court have openly opposed the *Lemon* test. But in a 1994 case, *Kiryas Joel Village School District v. Grumet*, the Supreme Court refused to overturn *Lemon*, even though such action had been widely predicted by constitutional experts. Thus, while the *Lemon* test is not always popular with the Supreme Court, it has not yet been entirely abandoned.

The Supreme Court has ruled on many Establishment Clause issues, from school prayer to city-sponsored religious displays at major holidays. Taken together, the Court's rulings on these issues determine how high the wall of separation between church and state really is.

**RELIGION AND THE PUBLIC SCHOOLS.** Most cases under the Establishment Clause involve religion and education. Since public schools are agencies of the government, any religious programs in them raise Establishment Clause issues, as does "parochaid"—government financial aid to parochial or private religious schools.

Many accommodationists believe that the most important part of education is learning basic moral values, which they argue come from religion. Therefore, to these Americans, religion should be part of the school curriculum—in public or in private schools. But separationists maintain that if the government supports religious instruction, it is clearly violating separation of church and state. And, separationists ask, who decides what religious beliefs get government endorsement? Do moral values come from the Catholic catechism, or the law of Moses, or the writings of Muhammad, or the teachings of Buddha?

***School Prayer.*** Perhaps the most controversial Establishment Clause issue involves prayer in public schools.

In *Engel v. Vitale* (1962), the Supreme Court prohibited the use of a nondenominational prayer composed by the New York State Board of Regents to open the school day. The Court held that "in this country it is no part of the business of government to compose official prayers for any group of the American people to recite as part of a religious program carried on by government."

In *Abington School District v. Schempp* (1963), the Supreme Court also struck down a Pennsylvania law requiring the school day to begin with Bible readings and the Lord's Prayer. And in *Wallace v. Jaffree* (1985), the Court declared unconstitutional Alabama's "moment of silence" law, which set aside a period of silence in public schools for "meditation or voluntary prayer." The Court held that the legislative history of Alabama's law indicated that the state intended to describe prayer as a favored practice. Furthermore, in *Lee v. Weisman* (1992), the Supreme Court ruled that official prayers at public school graduation ceremonies violated the Establishment Clause.

▲ *Ishmael Jaffree objected to Alabama's "moment of silence" law because he wanted his children to be "free from programmed thinking."*

In sum, the Supreme Court's decisions have prohibited school sponsorship of religious exercises. The Court has never banned prayer in public schools if it is done voluntarily by an individual student. Nor has the Court forbidden the study of religion or the Bible, as long as such study is done in a secular, or nonreligious, manner.

Accommodationists believe that school prayers and Bible readings are not intolerant, because students are not forced to participate. If students object, say accommodationists, they may sit quietly or leave their classrooms. But separationists argue that students should not have to make such a choice, which might cause them embarrassment in front of their peers. Separationists maintain that the government should not be involved in any religious activity because it

inevitably makes someone feel left out because of their differing, or lack of, religious beliefs—violating the very message of belonging that the Establishment Clause represents.

***Equal Access.*** One particularly thorny issue is whether a public school violates the Establishment Clause when it gives religious groups "equal access" to school facilities on the same basis as other student groups. In 1984, Congress passed the Equal Access Act, which affected public schools receiving federal funds. The law said that schools that allowed meetings of student groups not related to the curriculum—such as chess and scuba clubs—could not discriminate against such groups "on the basis of the religious, political, philosophical, or other content of the speech at such meetings." Thus, if a school allowed a chess club to meet, it had to allow a Bible club to meet as well. The law specifically provided that teachers or other school officials could not participate in student religious groups.

In *Westside Community Schools v. Mergens* (1990), the Supreme Court held that the Equal Access Act did not violate the Establishment Clause. Said the Court: "[T]here is a crucial difference between *government* speech endorsing religion, which the Establishment Clause forbids, and *private* speech endorsing religion, which the Free Speech and Free Exercise Clauses protect." The Supreme Court extended the equal access doctrine in *Lamb's Chapel v. Center Moriches Union Free School District* (1993), when it held that if a school allows nonschool adult groups to use its facilities after school hours, religious groups must be allowed to use the property as well.

As the equal access cases illustrate, Establishment Clause issues can be very difficult. In trying to ensure separation of church and state, the government can risk violating the free exercise of religion and freedom of speech. Tolerance means that the government must not allow religious groups to impose their beliefs on others, but the government also

must show tolerance toward religious speech, particularly when it allows nonreligious groups to speak.

**RELIGION IN THE PUBLIC SQUARE.** The Establishment Clause is also involved when religion enters the public square, such as the town hall and the state legislature. The Court has been more inclined to permit religious expression in these official settings than in public schools, since the impressionable nature of schoolchildren is not an issue. But government endorsement, or official support, of religion is prohibited in the public square as well as the public classroom.

***Holiday Displays.*** Many local governments put up displays and decorations celebrating Christmas, a religious holiday for Christians. Some also commemorate Hanukkah, a Jewish holiday. The Supreme Court has upheld the use of such holiday displays if they include secular symbols (Santa Claus or a sign promoting religious liberty) as well as religious symbols (a menorah or a nativity scene).

***Prayer in Legislatures.*** While official prayer is forbidden in the public schools, it is allowed in Congress and the state legislatures. Both houses of Congress and most state legislatures begin their daily sessions with prayer, often led by chaplains paid with public funds. The Supreme Court upheld this practice in 1983, relying on the historical roots of prayers in legislative bodies. The Court also distinguished between schoolchildren and legislators, who are not "susceptible to religious indoctrination or peer pressure."

Accommodationists applaud these decisions because they seem to recognize the place of religion in American life. But many also contend that if prayer is acceptable for leglislators, it should be allowed for schoolchildren as well. Separationists maintain that official prayer violates the Establishment Clause whether conducted in the school or the capitol. They believe that official prayer in either setting destroys the message of tolerance that is at the heart of the First Amendment.

**RELIGIOUS BELIEFS IN WESTERN NATIONS**

| Country | % Responding Religion "Very Important" | % Believing in God or Universal Spirit |
|---|---|---|
| United States | 58 | 94 |
| Canada | 36 | 89 |
| Italy | 36 | 88 |
| Benelux* | 26 | 78 |
| Australia | 25 | 80 |
| United Kingdom | 23 | 76 |
| France | 22 | 72 |
| West Germany | 17 | 72 |
| Scandinavia** | 17 | 65 |

*Belgium, Luxembourg, Netherlands
**Sweden, Denmark, Norway

Source: George Gallup, "Religion at Home and Abroad," Public Opinion, March-May 1979, 38-9

**TOLERANCE FOR ALL?** Because religious values are held so deeply, freedom of religion can be a very controversial issue—particularly regarding the relationship between church and state. The large number of cases indicates that the issue is complicated, and that the Supreme Court has had difficulty finding the proper balance between government staying out of religion and religion staying out of government.

Americans are among the most religious people on the globe. Church attendance is high, particularly compared to Europe, and an overwhelming number of Americans say they believe in God. (See chart.) Separationists argue that these statistics are due to the separation of church and state, which gives Americans total freedom to worship without the interference of the state. But accommodationists believe that America has a long history of religion being involved in government, which should not be ignored.

For example, some members of today's Supreme Court, including Chief Justice William Rehnquist, believe that many of the earlier Establishment Clause cases have been wrongly decided. They argue that the First Amendment allows the government to prefer religion in general over nonreligion, as long as it does not favor a particular denomination. But separationists ask, is tolerance really tolerance if it does not apply to *all* people—including nonbelievers?

## THE FREE EXERCISE CLAUSE

Besides preventing an established church, the First Amendment also prevents Congress from "prohibiting the free exer-

cise" of religion. This part of the amendment is known as the Free Exercise Clause. While cases under the Establishment Clause involve government policies that *aid* religion, cases under the Free Exercise Clause challenge government policies that place a *burden* on religion. Most laws that are contested under the Free Exercise Clause today do not discriminate against a particular religion directly, but rather impose a hardship when applied to certain religious groups.

Does free exercise of religion mean that believers can practice their faith wherever they want and however they like? Should they be able to disrupt or hurt others? The Supreme Court has distinguished between beliefs and actions to set limits on free exercise of religion.

**BELIEF VS. ACTION.** Freedom of religious *belief* is one of the very few absolute rights in the Bill of Rights. But religious belief often involves *action* that, according to the Supreme Court, government can regulate under some circumstances. For instance, the government cannot outlaw the Christian Scientist belief in spiritual healing; however, the government can punish Christian Scientist parents who do not seek licensed medical attention for their children. But some critics of this policy ask: How can religious people uphold their beliefs if they cannot act upon them?

The very first Supreme Court case involving the Free Exercise Clause, *Reynolds v. United States* (1879), distinguished between belief and action. Reynolds was a Mormon living in Utah who had more than one wife, a practice known as polygamy. At that time, the Mormon church advocated polygamy for its members, but federal law prohibited it. The Supreme Court upheld Reynolds's conviction under federal law despite his religious beliefs.

The Free Exercise Clause, said the Court, did not protect actions that were "violations of social duties or subversive of good order." The Court noted, for example, that religious

beliefs in human sacrifice would not exempt an individual from being prosecuted for murder. Similarly, the Supreme Court in later cases upheld laws that required schoolchildren to be vaccinated despite their parents' religious beliefs and that prohibited the use of poisonous snakes in religious ceremonies. Also, parents who deny their children medical treatment for religious reasons may be prosecuted as criminals.

**THE FLAG-SALUTE CASES.** Jehovah's Witnesses, fundamentalist Christians known for actively promoting their beliefs, have been involved in many of the Supreme Court's religion cases. One of the most controversial cases involving Jehovah's Witnesses was *Minersville School District v. Gobitis* (1940). Lillian Gobitis, 12, and her brother William, 10, refused to salute the U.S. flag, as required in many states, and were suspended from school. The Gobitis family believed that saluting the flag was idolatry, forbidden by the Ten Commandments. But the Supreme Court, in a decision issued while World War II was beginning in Europe, upheld the flag-salute law and said that "religious liberty must give way to political authority."

### NOT VIOLATIONS OF FREE EXERCISE

*Government actions in the following examples were upheld by the Supreme Court against charges that they violated the Free Exercise Clause.*

***Social Security.*** *The government can require the Amish to pay Social Security taxes, even though the Amish have a religious practice of self-sufficiency and taking care of their own.* (United States v. Lee, *1982)*

***Racial discrimination.*** *The government may deny tax-exempt status to private schools that practice racial discrimination based on religious beliefs.* (Bob Jones University v. United States, *1983)*

***Military dress.*** *The military's interest in uniformity and discipline outweighs the right of a Jewish soldier to wear a yarmulke (skullcap) on duty.* (Goldman v. Weinberger, *1986)*

***Drug use.*** *A state may outlaw the use of peyote, a drug some Native Americans use in religious ceremonies.* (Employment Division v. Smith, *1990)*

Public outcry against the *Gobitis* decision was great, and in only three years the Supreme Court overturned it. In *West Virginia State Board of Education v. Barnette* (1943), which also involved Jehovah's Witness children, the Court struck down the flag-salute laws on both free exercise and free speech grounds. In an oft-quoted opinion, Justice Robert H. Jackson wrote for the Court:

> *If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.*

Forcing students to salute the flag and recite the Pledge of Allegiance was contrary to the First Amendment, the Court held. A tolerant nation could not make a person pledge loyalty to it; patriotism should be voluntary.

**COMPULSORY EDUCATION.** The Amish, a conservative Protestant sect that fled to America in the late 1600s to escape European persecution, believe in separating themselves from the modern world. Many Amish resist sending their children to school beyond the eighth grade, despite state laws requiring further compulsory school attendance. In *Wisconsin v. Yoder* (1972), the Supreme Court ruled that the government may not require compulsory education beyond the eighth grade for the Amish. The Court held that the Amish did not have to comply with a Wisconsin compulsory attendance law because the "self-sufficient agrarian lifestyle essential to their religious faith is threatened . . . by modern education." The Court held that the "state's interest in universal education" did not outweigh the free exercise rights of the Amish. Wisconsin had to show tolerance for the Amish and their different way of life.

UPI/Bettman

▲ *These Amish children run for the cornfields to escape Iowa school officials in 1965. The Supreme Court held in* Wisconsin v. Yoder *(1972) that "a way of life . . . is not to be condemned because it is different."*

## WHY RELIGIOUS TOLERANCE?

Wars and atrocities due to religious differences have plagued world history—from the Crusades (in which Christians sought to drive Muslims from the Holy Land), to the Spanish Inquisition (in which thousands of non-Christians were tortured and killed), to the Holocaust (in which Nazi soldiers systematically exterminated 6 million Jews). Even in the 1990s, religious conflicts have led to war in the former Yugoslavia between Muslims, Catholics, and Orthodox Christians.

The First Amendment helps ensure that in the United States such religious conflict does not tear the country apart. America contains many diverse religions that coexist peacefully, despite their differences. The Establishment Clause forbids the U.S. government from helping one religion at the expense of another and from preferring believers over nonbelievers. The Free Exercise Clause gives all people the same right to practice their faiths.

The First Amendment's legal imperatives for government actions serve as a model for the actions and attitudes of individual citizens, setting a standard for tolerance of others regardless of their religious convictions. For that reason, America has been relatively free of the religious strife that is common in other countries. It is a privilege that we too often take for granted.

# FREEDOM OF SPEECH

## *Freedom for the Thought That We Hate*

What if the government could punish people for speaking out against its policies? What if city officials could prohibit demonstrations in the public parks for groups they did not like? What if high school principals could suspend students just because they wore buttons protesting abortion? Should such things happen in a tolerant society?

In many nations, situations like these occur routinely. Freedom of speech is either unknown or exists only on paper, not in reality. In America, freedom of speech is essential to democratic government. Without free speech, through which citizens learn about and debate their differences, self-government would be virtually impossible in a nation as diverse as the United States.

But unpopular speakers on unpopular topics create much conflict in America, too. Some Americans believe that

THAT'S IT THEN. THE BILL OF RIGHTS IS FINISHED BUT CAN'T WE EXCLUDE DISGUSTING RAP GROUPS AND CRAZY FLAG BURNERS?
UNFORTUNATELY, NO.
Washington Post Writers Group

certain controversial messages—such as flag-burning or hatred for ethnic and religious minorities—should be restricted by the government. Other Americans argue that if the government can limit freedom of speech for offensive groups, it can also limit freedom of speech for everybody else. They agree with Justice Oliver Wendell Holmes, who said that the First Amendment is not designed to protect "free thought for those who agree with us but freedom for the thought that we hate."

On the other hand, does tolerance for differing views mean that *all* forms of speech should be acceptable? The Supreme Court has answered no, establishing certain limits on freedom of speech. What, if any, limits on free speech should be allowed in a democracy?

## A HISTORY OF CENSORSHIP

As long as there have been governments, there has been censorship: the official denial of free expression. Censorship has taken different forms—among them banned books, laws against certain types of speech, and imprisonment or death for dissenters.

In sixteenth-century England, for example, a subject of King Henry VIII would be sent to prison for saying, "I like not the proceedings of this realm." In earlier times, the sentence would have been even harsher—death for treason. None of the great English documents of liberty, including the Magna Carta and the 1689 Bill of Rights, protected freedom of speech or of the press.

In America, freedom of speech was first mentioned in the Massachusetts Body of Liberties in 1641. After the Revolutionary War, several states protected freedom of speech in their constitutions; the Bill of Rights added freedom of speech to the U.S. Constitution in 1791. Americans upheld the right of free speech only imperfectly, however.

**THE SEDITION ACT OF 1798.** Just a few years after the First Amendment was ratified, the national government passed the Sedition Act, part of the infamous Alien and Sedition Acts of 1798. Sedition is the urging of resistance to lawful authority or rebellion against the government. The Sedition Act made it a crime to write, print, or say "any false, scandalous, and malicious" statements against the government and its officials or "to incite against them the hatred of the good people of the United States."

The act was designed by President John Adams and his Federalist allies in Congress primarily to suppress dissent by their political opponents, the Democratic-Republicans led by Thomas Jefferson. The Sedition Act was never challenged before the Supreme Court, in part because the Democratic-Republicans feared how the Federalist-dominated Court might rule. The immensely unpopular act contributed to the defeat of the Federalists in 1800 and expired soon thereafter. No other national sedition law was passed until 1917.

### NO FREE SPEECH FOR CONGRESS?

*The first person convicted under the Sedition Act was a member of Congress, Matthew Lyon of Vermont. Lyon accused President John Adams of "a continual grasp for power" and "an unbounded thirst for ridiculous pomp, foolish adulation, and selfish avarice [greed]." Born in Ireland, Lyon immigrated to America as an indentured servant. He fought in the Revolution and later became a newspaper editor who supported Thomas Jefferson and the Democratic-Republican Party. Lyon served four months in prison for violating the Sedition Act, during which he was reelected to Congress by a landslide.*

Library of Congress

***In January 1798, before his arrest for violating the Sedition Act, Matthew Lyon brawled with a legislator from Connecticut on the floor of the House of Representatives.***

**THE ESPIONAGE ACT OF 1917.** With the advent of World War I, the national government once again acted to punish speech. To suppress criticism of the war, Congress passed the Espionage Act of 1917. This law made it a crime to interfere with the recruiting of soldiers or the draft and to "willfully utter, print, write, or publish any disloyal, profane, scurrilous, or abusive language about the form of government of the United States."

More than 2,000 people were convicted under the Espionage Act. The law was challenged repeatedly, and for the very first time the Supreme Court heard cases on freedom of speech. Although the Court upheld the law on several occasions, it began developing a doctrine of free speech that would eventually protect the very speech forbidden by the Espionage Act.

## PRINCIPLES OF FREE SPEECH

In the years since 1917, the Supreme Court has developed some basic principles regarding freedom of speech. One principle is that the First Amendment protects more than just spoken words. Another fundamental principle is that the government cannot forbid speech based on its content, on the nature of the message.

**SPEECH VS. ACTION.** Freedom of speech is not limited to spoken words alone, but includes several types of speech. "Pure speech" involves only spoken words, such as debates and public meetings, and has the greatest protection under the First Amendment. "Speech-plus" is speech combined with action, such as demonstrations and picketing. The speech portion of speech-plus is generally protected, but the action portion may be regulated. "Symbolic speech" is action that conveys a message in itself, without spoken words, and is sometimes known as "expressive conduct." Some examples

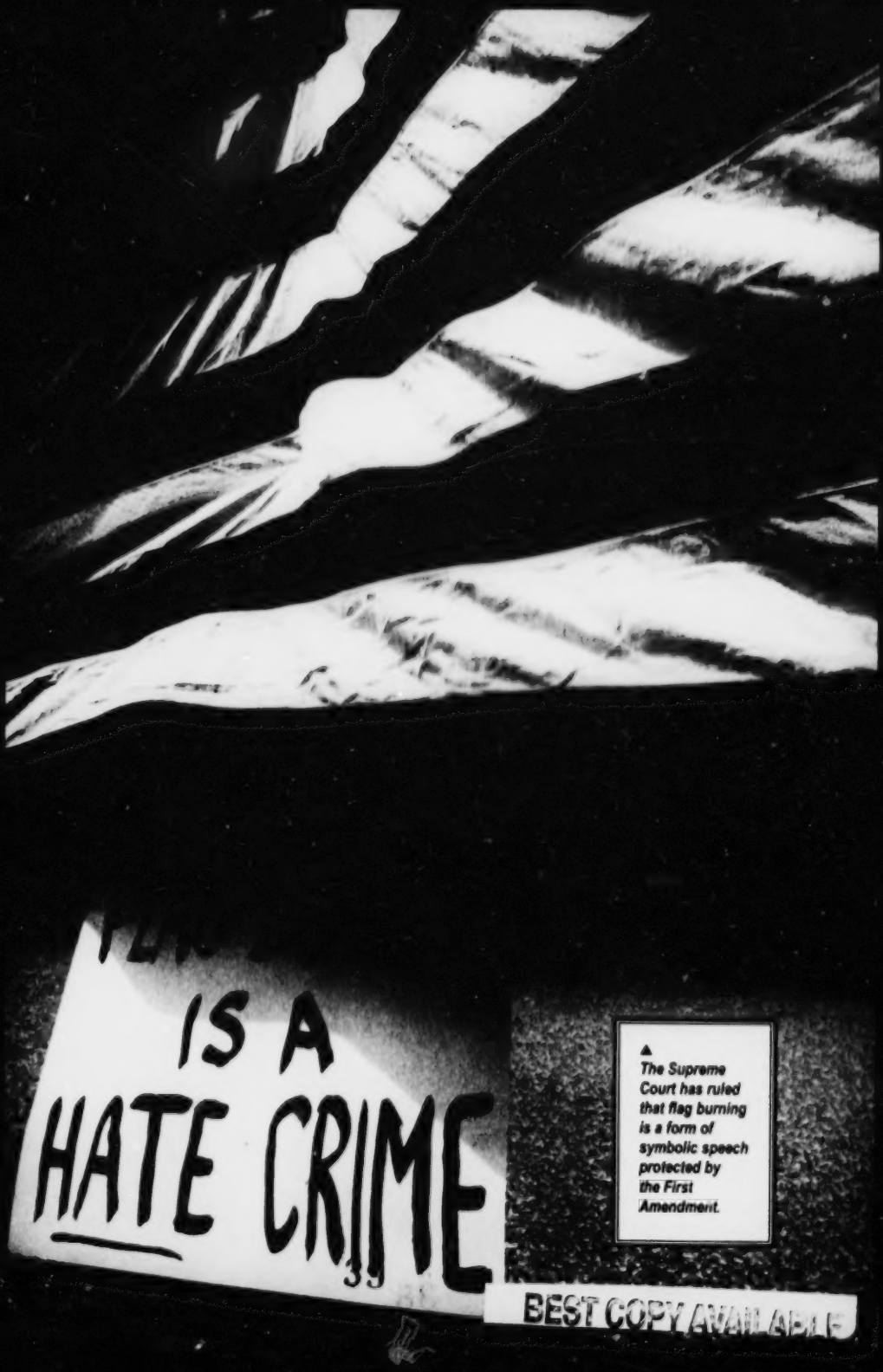
of symbolic speech are flag burning and wearing black armbands to school. Because symbolic speech is as much action as speech, some forms are protected under the First Amendment while others are not.

**CONTENT NEUTRAL.** The national, state, and local governments must be "content-neutral" in their actions regarding speech. However, governments may issue "time, place, and manner" regulations about when, where, and how freedom of speech may be exercised. For instance, they can forbid speeches on loudspeakers in parks after 9 p.m. to regulate noise. A good example of the principle of content neutrality is the issue of flag burning.

***Flag Burning.*** The Supreme Court held in *Texas v. Johnson* (1989) that burning an American flag was protected speech under the First Amendment. Gregory Lee "Joey" Johnson, who burned a flag at the 1984 Republican National Convention, was convicted under a Texas law that made it a crime to "desecrate" a flag in a manner that "the actor knows will seriously offend" others. Said the Court: "If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."

## LIMITS ON FREE SPEECH

Although the government must be tolerant of differing points of view, the Supreme Court has also ruled that freedom of speech has limits. As Justice Oliver Wendell Holmes once wrote: "The most stringent protection of free speech would not protect a man in falsely shouting fire in a theater and causing a panic." Some areas of restricted speech include obscenity, defamation, speech that leads to illegal action, fighting words, and speech in public schools.




▲ *The Supreme Court has ruled that flag burning is a form of symbolic speech protected by the First Amendment.*



BEST COPY AVAILABLE

**OBSCENITY.** Obscene speech is not protected by the First Amendment. Obscenity is generally defined as anything that depicts sex or nudity in a way that violates society's standards of decency. The problem is how to define obscenity legally. As Justice Potter Stewart noted: "I may not be able to define [obscenity], but I know it when I see it." In *Miller v. California* (1973), the Supreme Court set forth a complex three-part test for obscenity that gave local communities a great deal of authority in outlawing obscenity.

**DEFAMATION.** Besides obscenity, the First Amendment also does not protect defamation, damaging another person's reputation through false information. Slander is defamation through the spoken word; libel is defamation through the written word. For instance, if a client told other people that her lawyer was unethical, the client could be sued for slander; if she made the accusation in a letter, she could be sued for libel. Truth is always a complete defense in defamation cases.

The Supreme Court has developed very strict standards for slander and libel of public officials and public figures, because defamation lawsuits can create a chilling effect on free speech. These standards are discussed in greater detail under freedom of the press, because most defamation cases involving public figures are libel suits against newspapers, magazines, or books.

**FIGHTING WORDS.** The First Amendment does not protect abusive or insulting language, known as "fighting words." In *Chaplinsky v. New Hampshire* (1942), the Supreme Court held that such words, spoken face-to-face, "have a direct tendency to cause acts of violence" and are not protected speech. Chaplinsky was arrested for calling a city official a "damned Fascist" and a ". . . damned racketeer." Fighting words are more like a verbal assault than an exchange of information and opinion.

Close Up Foundation/Paul Kent

***Hate speech.*** Some people argue that ethnic slurs are like "fighting words" and should not be protected by the First Amendment. Some colleges and cities have even adopted policies and laws that prohibit "hate speech" on the basis of race, religion, gender, or sexual orientation. Supporters of prohibitions on hate speech point out that the First Amendment already has limits; speech that hurts people based on race or religion should be one of those limits—just like defamation or fighting words. In 1952, they note, the Supreme Court upheld an Illinois law that prohibited racist remarks as "group libel." These advocates also compare hate speech to sexual harassment, which is forbidden under federal law despite the First Amendment. They agree with Justice Oliver Wendell Holmes, who wrote that "words can be weapons."

Critics charge that codes against "hate speech" violate freedom of speech by determining what is "politically correct." They also maintain that censorship does not change bigoted attitudes. Furthermore, say such critics, hate speech codes are not like defamation (comments that damage a specific individual's reputation) or sexual harassment

### *"AN HONOR TO DEFEND THE FIRST AMENDMENT"*

Freedom Forum

**Anthony P. Griffin**

*Anthony P. Griffin, a Texas attorney, agreed to represent the Ku Klux Klan in a lawsuit in 1993. Griffin served as a volunteer attorney for both the National Association for the Advancement of Colored People (NAACP) and the American Civil Liberties Union (ACLU). The ACLU asked Griffin to defend the Texas Klan from a state attempt to force disclosure of its membership lists. Griffin said yes, because a similar Supreme Court case in 1958 held that Alabama's attempt to obtain the membership files of the NAACP violated the First Amendment.*

*The Texas NAACP fired Griffin for his stance—although the Black Heritage Committee of Galveston, Texas, gave Griffin an award. Griffin said, "When someone walks in my door who is a thug, a hoodlum, or is wearing white sheets, you can't say, 'No way. I won't [represent] him.' Without hesitation you say, 'It will be an honor to defend the First Amendment.'"*

(an ongoing pattern of behavior that can hurt an employee's job performance). Rather, critics contend, speech codes punish general remarks about groups of people that, while offensive, do not cause the types of direct harm to specific individuals that are currently recognized by the Supreme Court as exceptions to the First Amendment. Otherwise, they say, any speech that hurt someone's feelings would not be protected by the First Amendment.

**QUOTABLE QUOTES**

*I disapprove of what you say, but I will defend to the death your right to say it.*
—Voltaire, 1700s
French philosopher

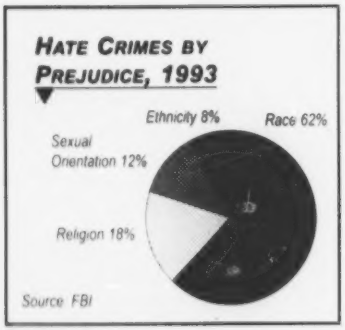
*I have always . . . believed that the greatest freedom of speech was the greatest safety, because if a man is a fool, the best thing to do is encourage him to advertise the fact by speaking.*
—Woodrow Wilson, 1919
U.S. President

*Express everything you like. No word can hurt you. None. No idea can hurt you. Not being able to express an idea or a word will hurt you much more. As much as a bullet.*
—Jamaica Kincaid, 1991
African-American author

The Supreme Court has ruled on two cases that deal with hate speech. In *R.A.V. v. St. Paul* (1992), the Court overturned a St. Paul, Minnesota, city ordinance punishing the use of symbols, such as a burning cross or a Nazi swastika, on public or private property that "arouses anger, alarm, or resentment in others on the basis of race, color, creed, religion or gender." R.A.V., a white juvenile, was accused of burning a cross in a black family's yard.

The Supreme Court held that the St. Paul law punished speech that could not be regulated purely on the basis of its content. The Court pointed out that St. Paul had other ways of punishing cross burning—such as laws against arson and "terroristic threats." Indeed, R.A.V. was later jailed for the crime under other criminal statutes.

But in *Wisconsin v. Mitchell* (1993), the Supreme Court upheld a Wisconsin law that increased the penalty for crimes committed because of the victim's race, religion, sexual orientation, or other listed factors. Todd Mitchell, a black man,




▲ *In 1993, more than 7,600 hate crime incidents were reported to the FBI.*

was accused of leading an attack against a white juvenile after watching the movie *Mississippi Burning*—in which a white man beat a black youth who was praying. Mitchell asked the men in his group, "Do you all feel hyped up to move on some white people?"

This case was not like *R.A.V.*, said the Supreme Court in its *Mitchell* decision: "A physical assault is not by any stretch of the imagination expressive conduct protected by the First Amendment." Although Mitchell's words and thoughts about the white victim contributed to his sentence, the Court held, such is often the case in criminal law where differing motives lead to differing punishments. For instance, some states use the death penalty in cases of murder for financial gain but not in other types of murder. Moreover, said the Court, federal laws already prevent discrimination in housing, employment, public accommodations, and other areas. According to the Court, such laws do not violate the First Amendment because they prohibit discriminatory action, not speech.

**SPEECH IN SCHOOLS.** Speech may be restricted in some places, even though it could not be in others. The Supreme Court has upheld restrictions on freedom of speech in military bases, prisons, and schools when the expression interferes with the purpose of the facility.

The Supreme Court established the principle that teachers and students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate" in *Tinker v. Des Moines School District* (1969). Mary Beth and John Tinker were suspended from school for wearing black armbands to protest the Vietnam War. The Court recognized the Tinkers' right to use symbolic speech and overturned their

suspensions, but it also warned that free speech could be limited in other cases if students' actions would "materially and substantially disrupt" the school's educational purpose.

In two later cases, *Bethel School District v. Fraser* (1986) and *Hazelwood School District v. Kuhlmeier* (1988), the Supreme Court held that the rights of students are not the same as the rights of adults in similar settings. Matthew

### "You've Got to Stand for Something"

*Kathryn Sinclair was overjoyed to be selected as one of the valedictorians of her high school in 1994. But her joy soon faded when she received a teacher's memorandum containing guidelines for the student graduation speakers. Among these were that the speeches should "keep it positive" and not "name names" because "someone gets left out." In her speech, Kathryn wanted to thank the teachers who had helped her, and she wanted to dedicate her speech to her boyfriend—a fellow student who had committed suicide the previous fall.*

Shacklett's Photography

▲ **Kathryn Sinclair**

*Kathryn and her parents protested to her principal, because they believed such guidelines did not fit within the Supreme Court's ruling in* Hazelwood School District v. Kuhlmeier *(1988). They argued that the First Amendment protected the content of Kathryn's speech. Despite the memorandum, the principal said that he did not want to change the speech's content, but to "make sure it's not vulgar, racist, or derogatory to other people." He told Kathryn that she would have to submit her valedictory speech to him for approval before her graduation.*

*Kathryn's classmates were angry at her stand. They thought she would say negative things about the school in her speech, because they had heard stories about disagreements between some teachers and her. During that school year, Kathryn received hate mail and bomb threats. She finally had to finish her senior year at home, and when she returned to school for an awards ceremony, she was physically assaulted.*

*Kathryn eventually read her speech to the principal before graduation, but she would not permit him to change any content. When Kathryn spoke at graduation, plainclothes police officers guarded her family. She quoted from the First Amendment and a favorite country song, "You've Got to Stand for Something or You'll Fall for Anything." To her classmates, she said: "My challenge to you . . . is not to be afraid of the trials and battles you will confront in life. If no one else supports you, do not lose faith for you can support yourself." Only one student applauded Kathryn's speech.*

*Earlier in the school year, some of Kathryn's fellow students had worn armbands that read "K.K.O." ("Kick Kathryn Out"). Said Kathryn at the time: "They don't realize that they're doing exactly what I am fighting for. They are utilizing their freedom of speech."*

Fraser, a high school senior, had been suspended for making a sexually suggestive speech at a student assembly. Fraser used no obscene words, but he did make several graphic sexual allusions. Although an adult could not have been punished for the same speech, the Court ruled that "the First Amendment does not prevent the school officials from determining that to permit vulgar and lewd speech such as [Fraser's] would undermine the school's basic educational mission." The Court distinguished between the political speech at issue in *Tinker* and the sexual speech made by Fraser.

The Supreme Court has also upheld the broad power of school officials to censor "school-sponsored expressive activities," such as student newspapers and plays. The Court held in *Hazelwood* that "educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical [educational] concerns."

## FREE SPEECH FOR ME, BUT NOT FOR THEE?

Taken together, the Supreme Court decisions on freedom of speech create a philosophy about its place in American society. Justice Oliver Wendell Holmes argued that the First Amendment should promote "free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market." According to this theory, government should allow speech that promotes offensive ideas because suppressing speech would be even more damaging to society.

Under the "marketplace of ideas" model of free speech, the best way to respond to offensive speech is with more speech, or counterspeech. Thus, some people argue that in 1977 when Nazis sought to march in Skokie, Illinois, a sub-

urb of Chicago with many survivors of the Holocaust, the residents should have held their own anti-Nazi demonstration rather than pass laws to prohibit the Nazi march. But other people say that the "marketplace of ideas" model unfairly penalizes those who have the least power in the market—such as women, racial minorities, and unpopular religions. Too often, they say, the most vulnerable people must pay the price of free speech for others. But, advocates of free speech point out, the most vulnerable people also benefit the most from the protection of unpopular ideas. Freedom of speech protects Ku Klux Klan marches, but it also protects civil rights demonstrations. As one civil liberties activist remarked, "that's the price we pay for liberty."

### "DEFENDING MY ENEMY"

*In 1977, the American Nazi party sought to march in Skokie, Illinois—a predominantly Jewish suburb of Chicago, which included many survivors of Hitler's death camps. The citizens of Skokie were outraged and passed several laws designed to keep the Nazis from marching there.*

*The American Civil Liberties Union (ACLU) successfully defended the free speech rights of the Nazis, but at a great price. The ACLU lost half its members over the Skokie case. Opponents of the Nazis especially criticized Aryeh Neier, the national executive director of the ACLU, who was a Jewish refugee during World War II and barely escaped the Holocaust himself. Wrote Neier in his book about the case: "I supported free speech for Nazis when they wanted to march in Skokie in order to defeat Nazis. Defending my enemy is the only way to protect a free society against the enemies of freedom."*

UPI/Bettmann Newsphotos

***These members of the National Socialist Party of America (American Nazis) rallied in Chicago in 1978. The Nazis never marched in Skokie, despite their court victory.***

Still, there appears to be a conflict between freedom of speech and tolerance: How can protecting intolerant speech be tolerant? How can defending Nazis or the Ku Klux Klan create a society in which people respect each other's differences? Certainly hate groups do not respect differences; they want to get rid of everyone who is not like them.

But, say some free speech advocates, if Americans ban messages we don't want to hear, aren't we guilty of being just like the Nazis and the Klan? Newspaper columnist Nat Hentoff—who writes frequently on First Amendment issues—argues that censorship is censorship, regardless of how "good" the motive. He believes that political groups both on the left and the right often try to censor each other, in a policy of "free speech for me—but not for thee."

Nothing in the First Amendment prevents the government from passing laws to prohibit discrimination. Nothing in the First Amendment gives anyone the right to assault another person because of race, gender, religion, or any other characteristic. But the Supreme Court has ruled that the government must punish action, not speech. Under the First Amendment, there is no such thing as an illegal idea. And as long as individual citizens believe in that ideal, freedom of speech will be safeguarded for every American.

# FREEDOM OF THE PRESS

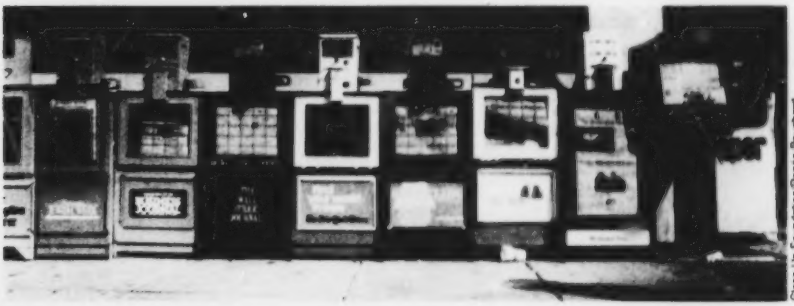
## *A Cantankerous Press Must Be Suffered*

What if the government had to approve in advance all newspapers and broadcasts on television and radio? What if public officials could sue people who wrote letters to the editor criticizing their actions? What if Congress outlawed supermarket tabloids? How would a tolerant society deal with these issues?

Thomas Jefferson believed so strongly in freedom of the press that he once said: "were it left to me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter." Like freedom of speech, freedom of the press is essential to a democratic government. A free press ensures that citizens have the information they need to make sound decisions—even when the government wishes otherwise.

But sometimes a free press can print things even citizens do not want to hear. The courts have held that "a cantankerous press must be suffered" so that the press can have the necessary freedom to perform its vital role in a democracy.

***How many newspapers are available in your community? Does this affect your ability to get the news you need?***



Close Up Foundation/Renée Bouchard

According to this reasoning, Americans have to be tolerant of the news they do not like to get the news they need.

## ENGLISH ROOTS

In the late fifteenth century, the art of printing spread rapidly across Europe, aided by the invention of movable type by Johannes Gutenberg, a German artisan. With printed material more widely available, censorship soon followed. Monarchs and religious leaders were afraid of the political power that came with a free press.

In England, church officials could suppress books they believed were heretical (contrary to the church's teachings) by the 1520s. England's King Henry VIII issued the first list of banned books in 1529. He also created a licensing system for all books in 1538. As of 1559, all new written works had to be submitted for censors' approval under the order of Henry's daughter, Queen Elizabeth I. Parliament did not abolish the licensing system until 1694.

Another restraint on freedom of the press, developed by the English courts, was the prohibition of "seditious libel"—which basically meant criticizing the government in print. The supposed justification for punishing seditious libel was that criticism of the government led to revolution and unrest. Even if writers told the truth, they could be punished, for "the greater the truth, the greater the libel." Truthful criticism would be most likely to provoke the people to take action against the government.

## FREE PRESS IN AMERICA

The colonial press was licensed, just as in England, and Americans were prosecuted for seditious libel as well. But the crown's defeat in a famous seditious libel trial in the colony of New York put a halt to such prosecutions.

**The Zenger Trial.** A German immigrant who knew little English, John Peter Zenger was the printer of a New York newspaper. Zenger acted as a front for several lawyers who anonymously wrote many articles in his newspaper criticizing the royal governor. Zenger refused to reveal the identity of the writers and was prosecuted for seditious libel, which carried a possible death sentence. At Zenger's trial in 1735, his attorney argued that truth should be a defense against the charge. The attorney argued to the jurors that by finding in Zenger's favor, they would be establishing the "right—the liberty—both of exposing and opposing arbitrary power . . . by speaking and writing truth." The jury acquitted Zenger, and seditious libel prosecutions virtually ended. But colonial legislatures still had licensing powers.

**After the Revolution.** The Virginia Declaration of Rights was the first constitutional protection of freedom of the press by a state after the Revolutionary War. Five states listed freedom of the press in their suggested amendments to the U.S. Constitution of 1787, and freedom of the press became part of the First Amendment when the Bill of Rights was ratified in 1791.

**The Sedition Act of 1798.** Despite the Zenger case, American newspaper editors were also punished for sedition after the British left. In 1798, just seven years after the First Amendment was ratified, the national government—dominated by the Federalist party—passed the Sedition Act. This act made it a crime to write, print, or say "any false, scandalous, and malicious" statements against the government and its officials or "to incite against them the hatred of the good people of the United States." In practice, this act was used by President John Adams and his Federalist allies to punish the Democratic-Republican newspaper editors who supported Thomas Jefferson.

One of these editors, Matthew Lyon of Vermont, was convicted and jailed while serving in Congress. The Democratic-Republicans did not appeal to the U.S. Supreme Court, because many Federalists served as justices. Only in 1964, more than 150 years later, did the Supreme Court finally declare the Sedition Act unconstitutional in a famous case that secured other press freedoms, *New York Times v. Sullivan*.

## PRIOR RESTRAINT

The most basic principle of a free press is that government may not, except in extraordinary circumstances, censor a work before it is published. Such action is known as prior restraint. However, government may sometimes punish authors or editors of certain writings after publication.

**NEAR V. MINNESOTA (1931).** Jay M. Near owned a weekly newspaper, the *Saturday Press*, in Minneapolis, Minnesota. During the 1920s, Minneapolis was a hotbed of prostitution, illegal liquor, gambling, gangs, and graft. Many "scandal sheets" in the area published charges of official corruption and gangland murders, in addition to lurid details of the sexual adventures of prominent citizens. Some of these newspapers actually extorted wealthy individuals by promising not to print embarrassing stories. In response, Minnesota passed a law that allowed local courts to issue an injunction (a court order that prohibits an action from taking place) to stop publication of any periodical designated as a "nuisance."

Near's *Saturday Press* was "gagged" under the law, despite the fact that the paper had accused public officials of corruption—including some of the very people who sought the injunction. The paper also had a racist and anti-Jewish viewpoint, which the trial judge cited in defense of the injunction. However, several of the city leaders accused by

# The Saturday Press

Vol. 1, No. 4 — Minneapolis, Minn., Oct. 15, 1927 — Price 5 Cents

## A Direct Challenge to Police Chief Brunskill

**The Chief, in Banning This Paper from News Stands, Definitely Aligns Himself With Gangland, Violates the Law He Is Sworn to Uphold, When He Tries to Suppress This Publication. The Only Paper in the City That Dares Expose the Gang's Deadly Grip on Minneapolis. A Plain Statement of Facts and a Warning of Legal Action.**

### Respectfully Submitted

There seems to be an impression among gentlemen of peculiar bent that the suppression of our street sales has rendered abortive our attempt to cleanse this city of gang rule. These gents are intellectual

testify before your body he would be more than glad to give you sufficient evidence upon which to base an indictment of the acknowledged gang-leader, Miss Barnett—the man who threatened Mr.

Minnesota Historical Society

▲ *This issue of the* Saturday Press *was "gagged" under Minnesota law in 1927. Is it more or less sensationalistic than today's mainstream newspapers?*

the *Saturday Press* were later convicted or forced to resign. Near argued that the Minnesota law was a prior restraint and appealed to the Minnesota Supreme Court, which upheld the injunction. Said the court, contradicting the principle established in the *Zenger* case: "There is no constitutional right to publish a fact merely because it is true."

After the gag order had been in effect almost four years, Near's case finally reached the U.S. Supreme Court. In *Near v. Minnesota* (1931), the Supreme Court struck down the Minnesota law. The Court declared that upholding such prior restraint "would be but a step to a complete system of censorship," and that the appropriate remedies for any wrongs Near committed would be in lawsuits for libel after the paper was printed.

Furthermore, said the Court: "The fact that the liberty of the press may be abused by miscreant purveyors of scandal does not make any the less necessary the immunity of the press from [prior] restraint in dealing with official misconduct." But the Court also warned that prior restraint might be

permissible in certain cases of national security, such as publishing the "sailing dates of transports or the number and location of troops."

Justice Louis Brandeis, the first Jewish member of the Supreme Court, staunchly defended the anti-Semitic *Saturday Press*. Today, Near's newspaper would certainly be regarded as "hate speech" and might also be compared to a supermarket tabloid that seeks sensation for profits. But Justice Brandeis, along with the Court's majority, believed that to prohibit "irresponsible journalism" would endanger freedom of the press for everyone.

Surprisingly, many major newspapers at the time thought *Near* was an insignificant case, believing it did not affect them. However, *Near* created a strong policy against prior restraint that protected the national press as well as less reputable newspapers. In 1971, *Near* helped the *New York Times* and the *Washington Post* take on the U.S. government.

**THE PENTAGON PAPERS.** National security was at issue in the famous "Pentagon Papers" case, which involved top-secret documents on the history of the Vietnam War. Daniel Ellsberg, a former Pentagon employee, illegally copied the Pentagon Papers and leaked them to the *New York Times* and the *Washington Post*, which published excerpts from the documents. The U.S. government obtained a court order forbidding further publication of the Pentagon Papers, the first time in American history that the federal government successfully used a prior restraint.

The newspapers appealed to the Supreme Court in the case of *New York Times v. United States* (1971). The Court held that the government had not proven that publishing the Pentagon Papers would jeopardize national security, thus not overcoming the "heavy presumption" against prior restraints. Wrote Justice Hugo Black: "In the First Amendment, the [Founders] gave the free press the protection it must have to

fulfill its essential role in our democracy. The press was to serve the governed, not the governors."

## LIBEL

Prior restraint is a way that the government can limit free press. But private individuals can also restrict freedom of the press through libel suits, charging that their reputations have been damaged through false information. When laws make libel easy to prove, the press is often reluctant to publish information in fear of potential lawsuits.

In *New York Times v. Sullivan* (1964), the Supreme Court made libel harder to prove when public officials are involved. In the midst of the civil rights movement, the *New York Times* published an ad submitted by a civil rights group that accused the police in Montgomery, Alabama, of conducting a "wave of terror" against black leaders—including Rev. Martin Luther King Jr. The ad contained some errors about specific details of the police action, and the city commissioner in charge of police, L. B. Sullivan, sued the *Times* for libel. A local Alabama jury awarded him $500,000 in damages.

***Rev. Martin Luther King Jr. leads more than 200,000 people in the 1963 March on Washington for civil rights. The case of* New York Times v. Sullivan *(1964) made coverage of the civil rights movement easier for newspaper reporters, many of whom had been sued for libel by southern officials.***

UPI/Bettmann

The Supreme Court unanimously overturned the libel judgment. The Court held that in cases where a public official was criticized for official conduct, errors of fact alone were not enough to prove libel, nor was carelessness in printing the error. To win a libel suit, a public official had to prove the error was made with actual malice, "that is, with knowledge that it was false or with reckless disregard of whether it was false or not." Actual malice is very difficult to prove in libel cases. In later decisions, the Court extended the actual malice standard in libel cases to public figures, as well as public officials.

## STUDENT NEWSPAPERS

Should high school newspapers enjoy the same freedom of the press as professional newspapers? Many experts believed that *Tinker v. Des Moines School District* (1969), which held that students have First Amendment rights, included freedom of the press for the staff of school newspapers. But in *Hazelwood School District v. Kuhlmeier* (1988), the Supreme Court ruled that teachers and principals can exercise editorial control over school-sponsored publications.

Because educators are employees of the state, many people argue that the *Hazelwood* ruling allows government censorship of student newspapers. But others believe that because schools own and operate student newspapers, school officials are more like editors at professional newspapers than censors. However, a few states have passed laws protecting the right of students to control the content of their publications—subject to the same restrictions on libel and obscenity as professional journalists.

## ALL THE NEWS THAT'S FIT TO PRINT?

The Supreme Court has allowed the press to publish incorrect, unsavory, and sometimes damaging news in order to

protect the press's ability to print vital information on public issues. But many Americans object to newspaper articles that they believe contain racist or controversial views. In recent years, numerous incidents have been reported of student groups stealing college newspapers that contain viewpoints they oppose.

Technically, such action does not violate the First Amendment, because it is carried out by private individuals rather than the state. However, other Americans object to students stealing newspapers, because they believe it violates the spirit of tolerance of differing beliefs that underlies the First Amendment. They say that the appropriate response to an objectionable article is to picket the newspaper or write letters to the editor. Tolerance does not mean supporting an offensive publication; it means acknowledging the right to print it. And for freedom of the press truly to exist, individual citizens must acknowledge that right as well as the government.

# TOLERANCE IN ACTION

Tolerance is hard to get—and even harder to keep. When others contradict our most cherished beliefs, it is easy to want to outlaw their opinions. But by showing tolerance for differing ideas—no matter how offensive to ourselves—we create an atmosphere in which our own ideas—no matter how offensive to others—can be protected.

The First Amendment is only one step toward securing a tolerant society, but in 1791 it was a very important step. Never before had any country protected freedom of religion, freedom of speech, and freedom of the press in its highest form of law. Never before had any country recognized that its people had the right to be different.

Of course the First Amendment has its limits. Nothing in the First Amendment prohibits discrimination on the basis of race, sex, or other characteristics; that kind of tolerance is accomplished by the Fourteenth Amendment's guarantee of "equal protection of the laws." But nothing in the First Amendment prevents Congress from passing laws that punish discriminatory actions.

Tom Rosier/Southlight

*These children march on behalf of the Ku Klux Klan in Jackson, Mississippi. Their right to freedom of speech is protected by the African-American police officers in the left background.*

What the First Amendment forbids the government to do is to punish people just because they have different beliefs, however unpopular with society as a whole. Yet the First Amendment does not restrict the actions of private individuals—it simply provides a model for their conduct. To have a truly tolerant community, each citizen must work to achieve that goal, using the First Amendment as a guidepost.

As Justice William O. Douglas wrote: "What our Constitution says, what our legislatures do, and what our courts write are vitally important. But the reality of freedom in our daily lives is shown by the attitudes and policies of people toward each other in the very block or township where we live." So it is with tolerance. The First Amendment can become nothing more than words on paper, if it does not inspire citizens to treat each other with respect. And respecting each other's differences is the answer to Rodney King's question: it is how we all can get along.

How can you make a difference? Think back to Kathryn Sinclair's story, told on page 41. How would you have treated her if you were one of her classmates? Would you have sought to have her kicked out of school—or attacked? Would you have threatened her? Would you have protested her position peacefully? Would you have stood up for her right to be different, even if you disagreed with her?

In any person's life, there will be many Kathryn Sinclairs. There will be lots of times when you will be asked to take a stand, to say whether you agree or disagree with another person. But if you can respect that person's right to have different beliefs, even though you disagree with him or her, then you have won the biggest part of the battle. You have helped make sure that the First Amendment is a living part of your community.

The First Amendment is America's blueprint for tolerance; it tells Americans what our nation's house should look like. But it is still up to each of us as citizens to help build the house.

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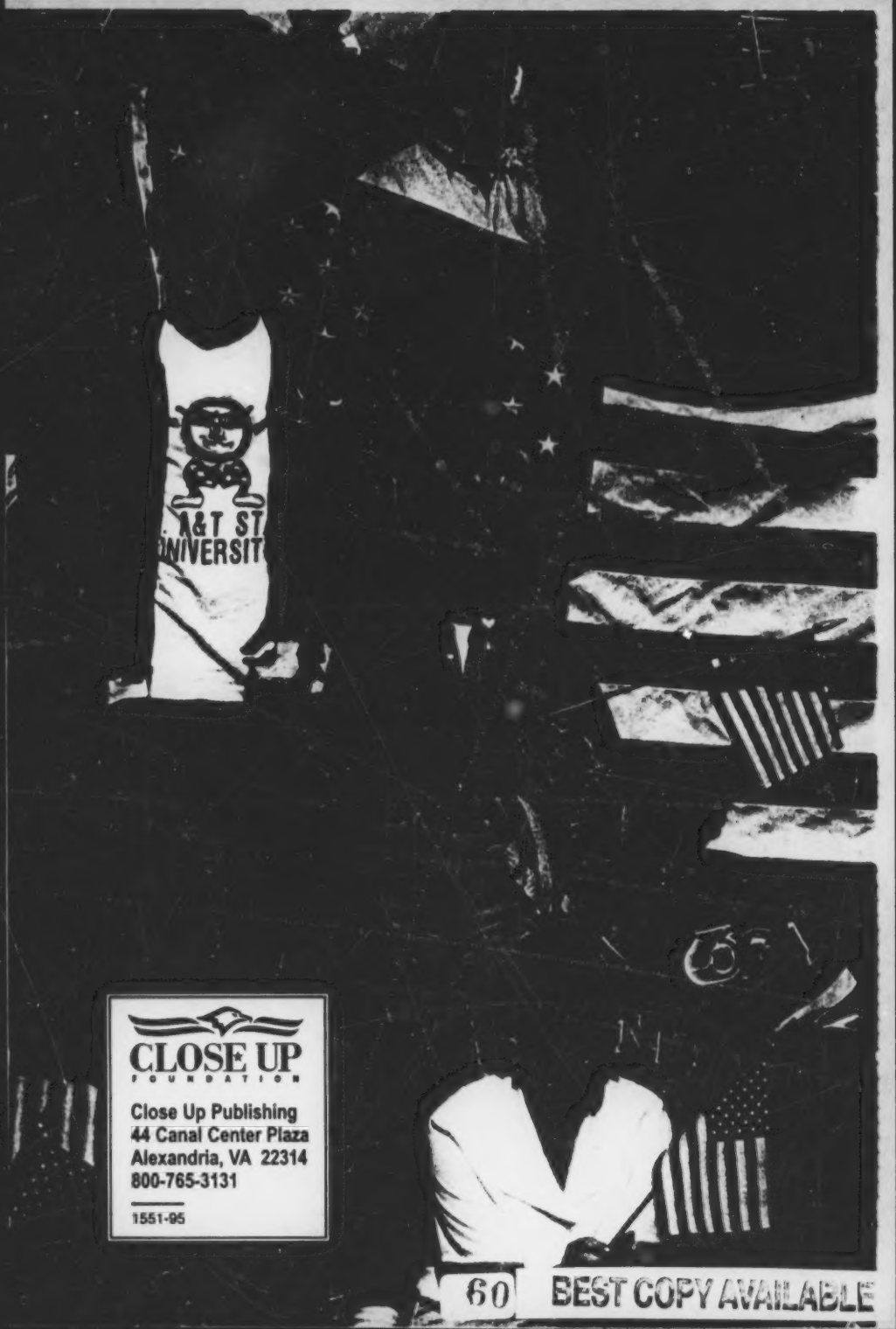


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# TEACHER'S RESOURCE

## THE FIRST AMENDMENT

***America's Blueprint for Tolerance***

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# TEACHER'S RESOURCE

## THE FIRST AMENDMENT

## *America's Blueprint for Tolerance*

Developed by Amy N. Edwards, Linda R. Monk, and Charles R. Sass

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# To the Teacher

## What Is The First Amendment: America's Blueprint for Tolerance?

The population of the United States is made up of people from diverse racial, ethnic, religious, and socioeconomic backgrounds. This diversity is one of the nation's greatest strengths and, at the same time, one of its greatest challenges. Not just in the United States, but around the world, a country's heterogeneity can present obstacles to peace and harmony in neighborhoods, in communities, and even in whole regions. Tensions can arise when one group is intolerant toward the beliefs or actions of another group. Early Americans also experienced these tensions, and the First Amendment to the U.S. Constitution was drafted to help create tolerance among differing people. The First Amendment protects five rights, of which three in particular build a more tolerant society. They are freedom of religion, freedom of speech, and freedom of the press.

*The First Amendment: America's Blueprint for Tolerance* is a short text designed to supplement your students' study of the Bill of Rights and the First Amendment. The book can help them identify the First Amendment as a blueprint for a tolerant society. The introduction explains the purpose of the book and describes its contents. The first chapter discusses events leading to the First Amendment's creation. The chapter also demonstrates how tolerance is the amendment's primary theme. The second, third, and fourth chapters address how specific Supreme Court cases related to each of these three rights support the nation's goal of a tolerant society. The last chapter illustrates how citizens play a vital role in fostering tolerance by ensuring constitutional values within their own communities. After reading the book and discussing specific issues, students should understand that by working together, the American people can build a more tolerant society—a society shaped and molded by the wisdom of the First Amendment.

*The First Amendment: America's Blueprint for Tolerance* and *The First Amendment: America's Blueprint for Tolerance Teacher's Resource* are designed to provide you with a complete unit on the First Amendment. You will not need to use your regular classroom text unless you so desire. The book and the teacher's resource offer an in-depth look at the history of the First Amendment, impor-

tant court cases involving First Amendment rights, and the influence of First Amendment rights on American society.

Focal chapters in *The First Amendment: America's Blueprint for Tolerance* discuss freedom of religion, freedom of speech, and freedom of the press. Each of these chapters describes the history of these rights and specific court cases that have tested First Amendment rights. The text and related activities in this teacher's resource can be easily adapted to a variety of ability levels; users are encouraged to adapt the lessons to suit their own circumstances and students' abilities.

## What Is The First Amendment: America's Blueprint for Tolerance Teacher's Resource?

Close Up's *The First Amendment: America's Blueprint for Tolerance Teacher's Resource* provides a variety of instructional activities to help you make best use of *The First Amendment: America's Blueprint for Tolerance*. The resource includes activities for teaching the chapters and case studies of court decisions mentioned in the book. Each unit is designed to expose students to issues involving tolerance and First Amendment rights. The activities and book can be integrated into and enhance courses such as U.S. history, government, civics, and law. The activities also emphasize what traditional textbooks often overlook—the fact that our Bill of Rights can guide Americans to understanding the importance of a more tolerant society. The activities may be used exactly as written, or you can modify and adapt them as your professional judgment suggests is appropriate.

The activities in this guide use instructional strategies that help reinforce the "human" side of the Bill of Rights. Each unit includes student objectives, a list of terms and concepts, and classroom activities, some of which use case studies that focus on tolerance and the First Amendment. Units also include enrichment activities that will allow you to expand the lesson and student handouts that accompany many of the activities. Feel free to photocopy the student handouts for classroom use.

## Goals

This guide should help your students to:

1. Better understand the history of the First Amendment.
2. Apply provisions from the First Amendment to specific case studies.
3. Explore the underlying theme of the First Amendment—tolerance—and discuss its influence on U.S. society.
4. Further enhance their knowledge of the Bill of Rights.
5. Speculate on how U.S. society might have been different if not for rights guaranteed by the First Amendment.
6. Analyze tolerance as it applies to their day-to-day lives.

## Features of the Units

Each unit has several features to help you present the topic.

***Objectives***

A list of student objectives is provided for each unit. After completing the reading and activities, students should have met these objectives. The objectives include both cognitive and affective goals to help you measure student learning.

***Student Activities***

Each unit contains activities that require students to exercise their critical-thinking skills and do independent research. The activities also emphasize important information that may not be found in the classroom text.

***Student Handouts***

Student handouts for each unit can be reproduced for classroom use. Each handout is keyed to a student activity. The handouts emphasize critical-thinking, evaluating, and writing skills.

***Enrichment Activities***

Suggestions for enrichment activities appear at the end of each unit. These activities can supplement the lessons or be considered for extra credit work. Most of these enrichment ideas involve writing or researching activities that can provide an additional valuable learning experience.

*The First Amendment: America's Blueprint for Tolerance Teacher's Resource* incorporates a wide range of activities designed to supplement a course of study. Therefore, none of the lessons follow a traditional lecture format. Rather, all involve group discussions, interactive activities, and student handouts to establish a common base of knowledge. This active learning approach motivates students to become interested in and involved with the rights guaranteed by the First Amendment. By using original resources and participating in a variety of learning activities, students' knowledge of First Amendment rights and tolerance will be enhanced.

While you have likely developed a teaching style that works for you and your students and feels comfortable, educational research shows increasingly that the most successful teachers are those who can effectively apply a wide array of teaching strategies. The following section provides you with a variety of strategies and suggestions derived from experienced classroom instructors.

### *Brainstorming*

Brainstorming is a technique for quickly generating a broad spectrum of ideas about a topic. Because no initial evaluation or discussion is allowed, brainstorming is a non-threatening strategy that allows every student to participate regardless of academic ability. The topic for brainstorming should be clearly stated, allow for a diversity of ideas, and require no extensive prior knowledge for a student to become involved. Responses should be posted as students call them out, and no discussion should be permitted because it may inhibit creative but risky ideas. Conclude a brainstorming session by focusing students' attention on the purpose for conducting the activity.

### *Debate*

A debate can be an effective means of presenting most positions on the readings. It may be difficult to involve all students in a single debate, so non-team members should serve as judges, moderators, or timekeepers to maintain interest. Holding several debates will allow all students to be on a debate team. The following debate procedures may be helpful when conducting a debate:

1. Select a topic—possibly one suggested by the class.
2. State the topic. For example: No student should be required to pledge allegiance to the United States flag.
3. Select pro and con debaters and allow them time to research and prepare.

4. Select a timekeeper and a moderator.
5. Seat the debaters in front of the class with the moderator in the middle; position the side favoring the debate statement to the right of the moderator and the opposing side to the left.
6. Begin the debate by having the moderator read the debate statement and introduce the first speaker supporting the statement. Speakers may only talk for a predetermined length of time.
7. The first opposition speaker then presents arguments for the same amount of time. This format of alternating pro and con speakers continues until all speakers have presented initial arguments.
8. Speakers will then make rebuttal arguments for a specified amount of time beginning with the group opposed to the statement.
9. Conclude the debate by polling the class. Discuss any changes of position in the audience. What were the most persuasive arguments presented by both sides?

***Panel Discussion***

A panel discussion is an effective means of researching and discussing a topic while allowing a sizable number of students to participate. The following guidelines may help you conduct a panel discussion:

1. The moderator introduces the topic and panelists.
2. Panelists present their views for a specified amount of time until all have spoken.
3. Panelists are given an opportunity to question other panelists and to discuss the issue.
4. The moderator closes the discussion with a summary of the panel presentation.
5. The moderator calls for a forum period during which the class may question panelists.
6. Conclude the panel discussion by polling the class. Discuss any changes of position in the audience. What were the most persuasive arguments presented?

***Classroom Use of Resource Persons***

Local communities often represent a vast, untapped resource. Community members have much to offer students and should be included in school instruction as often as possible. Teachers have often invited local citizens into their classes as guest lecturers. For example, in a class about the Constitution you may wish to ask constitutional scholars from a local university or law

school or lawyers to speak to your class about their perspectives.

Teachers and resource persons should always work together closely to plan the classroom visit. The following tips can help you prepare a resource person for a successful visit to your class:

1. Prepare the resource person. Tell the person about the characteristics of your students, what they have been studying, and what to expect from them. Suggest topics you would like to have the person cover and find out what is needed for the presentation.
2. Prepare students adequately. Give necessary assignments far enough in advance that students can complete them. Discuss the visit by the resource person and explain procedures for the visit.
3. Assist the resource person in classroom management if necessary. Do not leave the room.
4. Have the resource person begin the presentation immediately after class convenes.
5. If necessary, help the resource person terminate the presentation and depart gracefully.
6. Provide the resource person with feedback about the presentation and write a note of appreciation.
7. Have alternatives planned just in case the resource person does not arrive. These alternatives should be educationally sound and fit in the context of the current unit of instruction.

***Role Plays and Simulations***

One of the most effective instructional techniques, when used correctly, is role play or simulation. This technique enables students to experience a situation from the perspective of persons actually involved in a similar situation. Role plays and simulations are an effective means of transmitting knowledge, and they have a powerful impact on attitudes as well. Finally, role plays and simulations are excellent ways of allowing students to examine a situation from all perspectives. The following guidelines will help you conduct role plays and simulations:

1. Present the problem, situation, or task clearly and make sure students understand what they are expected to do.
2. Help students identify appropriate sources of information that will inform them of the perspective of the group or person they represent.

3. Involve everyone. If there are not enough roles for all students, create new roles or develop several versions of the simulation simultaneously.
4. Involve all students as quickly as possible.
5. Begin with simple activities. Students without experience in role plays and simulations may require time to develop the skills necessary to do them well.
6. Consider having students reverse roles. Assign students to represent views that they do not advocate personally.
7. Be certain before beginning that students adequately understand the perspective of the individual or group they represent. Allow students enough time to locate and analyze information and prepare their roles. Use this preparation time to talk with groups and individuals to gauge the degree to which they understand their roles.
8. Create an accepting environment where students can make mistakes, take risks, and be creative while being responsible. Do not expect polished performances immediately.
9. Conclude with a thorough discussion. Highlight the instructional objectives you had for the activity. What did you want students to gain from the activity? Relate the role plays or simulations to what students had been and will be studying. Explore how students felt and what their feelings suggest about the people who experienced the situation in real life. Did students feel that the roles they played were accurate representations of the real people? What did they learn from the experience?

   Do not be discouraged if role play or simulation does not work well the first time you use it. This technique can be difficult to use initially but pays handsome dividends once mastered.

***Small-Group Cooperative Learning***

Teachers have been doing small-group work for years. Recent research suggests ways in which teachers can conduct small-group activities more effectively than by simply putting students into groups and assigning them a task. The following guidelines will help you use cooperative small-group work:

1. Small-group activities can create opportunities for loss of control; therefore, such activities require class members to follow rules. Sample rules might include the following:



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- Move quickly and quietly to groups and remain there.
- Talking between groups is prohibited.
- Talking within groups must be done quietly.
- All groups must have leaders whose task is to keep the group working, make sure that everyone participates, and keep discussions focused on the issues.

2. Organize groups heterogeneously and design group tasks in such a way that every student becomes involved.
3. Encourage students to help each other without actually doing the work of another group member. One way to encourage cooperation is to award grades based on individual work as well as grades based on the performance of the group. Design tasks so that individual students can be assisted by their peers, but peers cannot do the work of the individual.
4. Help students develop the skills necessary to work well in small groups. You might review each activity's content objectives and discuss the following questions:
   - What helped this group work well together?
   - What interfered with this group's working together?
   - What could members do next time to help improve this group's work?
   - Did everyone participate? Why or why not?
5. Keep group size small; three to five students is optimal.
6. Give clear directions and allow adequate time for students to complete the task.

***Developing Critical-Writing Skills***

An essential part of every student's education is to learn how to write critically. Many of the writing activities for *The First Amendment: America's Blueprint for Tolerance Teacher's Resource* involve critical-thinking and writing skills. Although writing skills vary, you should guide students in these activities. The following writing model can help guide written responses to the readings:

1. Carefully read the assignment and ask any questions.
2. Brainstorm. List as many ideas as possible that are related to the topic.
3. Review this list. Group related ideas together.
4. Circle any ideas that could be expanded upon.
5. Cross out any unrelated ideas.
6. Reread the question. Ask yourself, "What do I think about (this topic, the Court's decision, etc.)?"

7. Analyze information and draw inferences.
8. Synthesize information and develop arguments.
9. Organize ideas.
10. Write these ideas in an organized and readable manner.
11. Proofread your work and share with a classmate. Offer and take constructive criticism.
12. Rewrite your paper.

***A Final Word***

The information presented in this introduction should make your task of teaching *The First Amendment: America's Blueprint for Tolerance* easier and will enrich the quality of instruction for your students.

## MOTIVATOR

### *Unity in Diversity*

Before students begin reading *The First Amendment: America's Blueprint for Tolerance*, write the following quote on the board:

***Can we all get along?***

Then, divide the class into halves and and ask each student to write a short paragraph in response to the question on the board. One half should write their paragraphs as if the answer to the question is "no." The other half should write as if the answer is "yes." In other words, half the class should state why Americans can't get along; the other half, why we can get along. Give the class five to ten minutes to complete their paragraphs. When all are finished, lead a short discussion about the background of the question. Ask students if they know who asked this question (Rodney King). Do they know who Rodney King is? What was the occasion during which King posed the question? Refresh students' memories about the Rodney King episode and the Los Angeles riots of 1992.

Next, ask students from each side to read their paragraphs. What reasons did class members give for either our ability or inability to get along in this country? Briefly, discuss their reasons as they are mentioned. Ask students if they think any individuals or groups exhibited intolerance in the Rodney King affair and the riots that followed. What do students think brought about this intolerance? Can Americans change these attitudes, or is intolerance merely a sign of the times that can only get worse? What are students, as young Americans, prepared to do about intolerance in their community, state, and country?

# UNIT 1

## *Tolerance and the First Amendment*

### STUDENT OBJECTIVES

After completing activities in this unit, students will be able to:

1. identify the rights stated in the Bill of Rights in general and the First Amendment in particular.
2. formulate a definition of *tolerance* and apply it to a variety of hypothetical situations.
3. discuss personal accounts of situations in which they or members of their families have been intolerant of others or have been victims of intolerance.
4. explore personal opinions of tolerance.
5. examine the history and development of the Bill of Rights.
6. analyze the concept of "majority rule, minority rights."

### TERMS AND CONCEPTS

Articles of Confederation
Bill of Rights
Constitution
constitutional democracy
equal protection of the laws
First Amendment
Fourteenth Amendment
incorporation
James Madison
majority rule, minority rights
private action
state action
Supreme Court
supreme law of the land
tolerance
unconstitutional

Certain terms and concepts may be unfamiliar to your students. Understanding the meanings of these terms is important for comprehension of the lesson. Before your class begins reading the first chapter of *The First Amend-*

*ment: America's Blueprint for Tolerance*, write the above terms and concepts on the board. Tell your students to be on the lookout for these items while reading the chapter. After they have finished reading "Tolerance and the First Amendment," go back through the vocabulary list and ask for definitions. Or have each student look up the meaning of one item on the list and be prepared to define it aloud. Explain any term or concept that students do not seem to understand.

## Student Activities

### *Activity 1—What Are Your Rights?*

Introduce the unit by writing the First Amendment on the board.

> ***Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.***

Tell students that the First Amendment is often considered the most important amendment in the Bill of Rights because it protects many rights that Americans hold dear. Ask students to share with the class rights that they believe the Bill of Rights guarantees them as United States citizens. Write their responses on the board. Ask them why these rights are important to all Americans. How has the U.S. government demonstrated that it respects and honors the rights stated in the First Amendment? Ask students for some examples to support their answers. (Some may suggest the right of the media to criticize the government or the right for people to practice a certain religion.) Ask them to cite situations in which the rights of the First Amendment have been violated. (Students may mention the persecution of members of certain religious or ethnic groups.)

To extend Activity 1, hand out copies of **Student Handout 1—Ranking Rights and Freedoms** and give students adequate time to complete it. When they have finished, lead a discussion based on their responses. Tally the number of votes for each right and rank them from

most popular to least popular. Discuss why some rights were chosen by nearly the whole class, while others were not. Focus on First Amendment rights. Were all five ranked in the consensus top ten? Ask students to read their answers to the questions at the end of the handout. Encourage class members with differing opinions to explain their rationales.

Remind students that with rights come also responsibilities, and that among their responsibilities is tolerance for others with whom they may not agree.

### *Activity 2—What Is Tolerance?*

Write the word ***tolerance*** on the board. In a brainstorming session, ask students to call out words and phrases that come to mind when they think of this word. Write responses on the board. After all responses have been suggested, briefly discuss each item mentioned. Decide which responses are accurate and belong on the board and which should be erased.

Then, have students come up with a class definition of tolerance. (*Webster's* says, ". . . being tolerant, especially of views, beliefs, practices, etc. of others that differ from one's own . . . ; freedom from bigotry or prejudice.") After the class has settled on a definition, write it on the board.

Ask students to keep this definition in mind as they read *The First Amendment: America's Blueprint for Tolerance* and examine case studies in future activities. Tell students that as they proceed, they are going to analyze tolerance and its relationship to the First Amendment. Explain also that the First Amendment was written to protect several rights of American citizens, but often the scope of each of those rights has been challenged in the Supreme Court.

### *Activity 3—Your Views and Attitudes*

Distribute **Student Handout 2—Personal Survey.** Mention to your students that all individuals are tolerant or intolerant of certain behaviors and ideas. Everyone has his or her own views and attitudes. This handout will help the students become more aware of their tolerance of others' beliefs. Allow them enough time to complete the handout. After they have finished, review their responses in a class discussion. Some may be hesitant to share their responses; this is acceptable. However, encourage as many as possible to share their thoughts with the class. Urge students to

explain why they hold a certain opinion. What experiences or people have influenced their opinions? Do they think they will ever change opinions? Why or why not?

### *Activity 4—Recognizing Tolerance*

Begin by pointing out that tolerance is often a difficult concept to understand. However, by analyzing several situations, students may get a better grasp of what tolerance means, as well as its significance. Organize the class into groups of four. Give each student a copy of **Student Handout 3—Recognizing Tolerance** and have them meet in their groups to discuss the statements listed on the handout. They should try to arrive at a majority decision about each item. After ten minutes, ask a representative from each group to report on the group's decision about each statement. Did all members of each group agree? Point out that tolerance is a complicated issue and that it involves a careful balance of both rights and responsibilities.

Go back and discuss each item on the handout. Ask students to try to draw conclusions about what are and are not examples of tolerance. (Students will likely suggest that examples 1a, 2b, 3b, 4a, and 5b describe tolerant behavior, while examples 1b, 2a, 3a, 4b, and 5a describe intolerant behavior. Certainly, answers may vary.) Your class should come away from this activity knowing that tolerance is a complex subject, and that people have and will continue to have varying viewpoints.

### *Activity 5—Tolerance in Early America*

Begin by distributing copies of **Student Handout 4—Tolerance and the First Amendment.** Then, ask students to read the first chapter, "Tolerance and the First Amendment," in *The First Amendment: America's Blueprint for Tolerance* and complete the handout. Give them adequate time to finish both assignments. After everyone has finished the work, lead a discussion on the handout questions. Use the **Teacher Notes for Student Handout 4** on page 20 to help you focus the discussion. Ask several students to read their responses to question 8 on the handout. By this time, students should be grasping the relationship between the First Amendment and tolerance.

### *Activity 6—Majority Rule, Minority Rights*

After students have read the section entitled "Majority Rule, Minority Rights" in the first chapter of *The First Amendment: America's Blueprint for Tolerance*, spend a few minutes discussing the following terms from the section:

- majority rule
- minority rights
- individual rights
- constitutional democracy
- tolerance

Then, ask students to write a one-page essay stating their thoughts on why it would be dangerous for our society if the majority was able to run roughshod over the minority in the name of majority rule. In writing about this topic, they should cite an example of an incident that they know about, where a minority group or opinion was not respected because the "majority ruled." Their examples do not have to be famous; they may be something that happened locally or at school. After all have finished, ask for volunteers to read their papers in class. Discuss each one, trying to place the example in the context of tolerance or intolerance.

### *Activity 7—Building a Tolerant Society*

The last paragraph of "Tolerance and the First Amendment" in *The First Amendment: America's Blueprint for Tolerance* includes the following sentences: *Each generation makes its own contribution to the meaning of the First Amendment. What will your contribution be?* Either lead a class discussion on what students think their generation's contribution will be or ask students to write a response to the question. Urge them to think about what they might be able to do as individuals to promote tolerance and add something positive to the meaning of the First Amendment.

## Teacher Notes for Student Handout 4—Tolerance and the First Amendment

1. Many of the colonists left England for America because they had been punished for their beliefs. They believed that by moving to a new land, they could freely practice their beliefs. Others came hoping to improve their living conditions.

2. It was ironic that many of the same colonists who left England to avoid persecution in turn persecuted others in the new colony who were different from them.

3. The Articles of the Confederation was the first constitution of the United States. It did not create a strong central government, so several political leaders decided to draft a new charter—the Constitution of the United States.

4. The Bill of Rights was added to the new Constitution by the First Congress when several key states said that the only way they would ratify the Constitution was if it included a bill of rights. One main purpose of the Bill of Rights is to protect minority rights in a system of majority rule. This means that all persons and their beliefs should be protected.

5. Incorporation refers to the process whereby the Supreme Court extended the guarantees of the Bill of Rights to the states. Before the amendments were incorporated, the rights were only applicable to the federal government.

6. The principle of state action refers to the fact that the Bill of Rights applies only to the government—or "state"—and those who act under the government's authority. The First Amendment applies to all actions of government, but it does not apply to private actions.

7. Students should mention that although the First Amendment protected many rights, it did not address some critical injustices in early America. For example, they should point out that slavery was allowed and that women did not enjoy equal rights under the law.

8. Answers will vary.

## Enrichment Activities

**1.** The Great Seal of the United States is pictured on page 6 of *The First Amendment: America's Blueprint for Tolerance*. Ask students to look at the seal for a few minutes to become familiar with it. What familiar symbols can they spot on the Great Seal (eagle, stars and stripes, arrows and an olive branch, thirteen stars, the motto *e pluribus unum*)? How is each symbol significant? How can one apply the phrase *e pluribus unum* to tolerance?

**2.** Ask students to find and clip recent newspaper or magazine articles involving acts of intolerance or tolerance. Briefly discuss each story in class and then have the students write a short summary about the article and the outcome. Pin the articles to a bulletin board under the appropriate headings of "tolerance" and "intolerance." Ask contributors of certain articles to bring the class up to date from time to time as the story unfolds or comes to a conclusion.

**3.** Have students write a one- to two-page essay discussing the rights and responsibilities of the First Amendment and the relationship of the amendment to tolerance. Ask several to read their essays in class and field questions from classmates who may have different opinions. Perhaps the school newspaper would be interested in printing several of these essays.

# UNIT 2

## *Freedom of Religion: Living With Our Deepest Differences*

### STUDENT OBJECTIVES

After completing the activities in this unit, students should be able to:

1. analyze cartoons and charts about freedom of religion.
2. compare the religious affiliations of eighteenth- and twentieth-century Americans and discuss the role of religion in the United States today.
3. describe a government and society in which church and state are linked.
4. recognize that church and state have not always been separate in the United States.
5. appreciate the protections provided by the Establishment Clause of the First Amendment.
6. analyze Supreme Court decisions in freedom of religion cases.
7. debate separationist and accommodationist positions on current topics.
8. discuss school prayer and why it has often been controversial.
9. explain how conflicts between belief and action can arise in issues involving the Free Exercise Clause of the First Amendment.
10. cite exceptions to compulsory education laws as determined by the Supreme Court.
11. develop their own opinions about freedom of religion.

### TERMS AND CONCEPTS

accommodationists
blasphemy
compelling interest
compulsory education
conscientious objector
established church
Establishment Clause

equal access
Free Exercise Clause
heresy
moment of silence
parochaid
public square
religious dissension
secular
separationists
Toleration Act of 1649
Virginia Statute of Religious Liberty
wall of separation

Certain terms or concepts may be unfamiliar to your students. Understanding the meaning of these terms is important for comprehension of the subject. Assign each student one item from the above list to define. Ask them to write their definition on a strip of paper. Then divide the class into two or more teams. Have teams alternate drawing one of the definitions out of a box and trying to identify the term it defines. Award each team one point for a correct answer. If a team cannot name the correct term, another team may try to identify it for two points. At the end of the game, the team with the most points wins—and the entire class will have reviewed all key terms and concepts.

## Student Activities

### *Activity 1—Cartoon Analysis*

Give students a minute or so to look at the cartoon on page 14 of *The First Amendment: America's Blueprint for Tolerance* and think about what it means. Then, lead a class discussion about the cartoon and how it applies to freedom of religion. The following questions will help you focus the discussion:

- Whom do the characters on each side of the middle character represent?
- What do the characters holding the smaller umbrellas have in common? How do they differ?
- Who is holding the large umbrella in the middle?
- What is the significance of the large umbrella?
- What message does the cartoon send about religion in the United States?

- Does the Constitution make room for all beliefs in the United States? In what ways?
- Could the four people holding the small umbrellas get along with each other in day-to-day life? How could they be tolerant of each other?

To extend this activity, ask students to draw their own editorial cartoons about the meaning of freedom of religion in America. You may want to display the cartoons on the bulletin board or submit them to the student newspaper for publication.

***Activity 2—Chart Analysis***

Before students study the charts on pages 17 and 26 in *The First Amendment: America's Blueprint for Tolerance*, ask them to guess which Christian denomination is the largest in the United States. Which is the second largest? Then ask them to guess which church they think most people belonged to in the 1700s. Next, have everyone look at the chart on page 17, "American Religious Beliefs, 1780-1990." Are they surprised? In what ways? Discuss why there are such dramatic differences in the numbers. Why are there so many Catholics now, but so few in 1790? Why is the reverse true with Congregationalists, who do not even make the 1990s list?

After discussing the information in the chart for a few minutes, ask students what they think this says about religion in America. Do they think there are other nations in the world that could show similar religious diversity as the United States? While discussing the diversity of beliefs in this country, you might want to have them look at the chart on page 26 entitled "Religious Beliefs in Western Nations." Why do Americans appear to be so much more religious than people in other Western nations? Could those figures be related to the diversity exhibited in the previous chart? How so?

To conclude this activity, ask students to comment on religious tolerance in the United States. Do we live in a society where people are highly intolerant of religions other than their own? Why do we seem to get along with people who have beliefs different from our own? How do the principles of the First Amendment apply to our attitudes about religious beliefs?

### *Activity 3—From Toleration to Freedom*

Introduce the unit on freedom of religion by having students read pages 14-19 in *The First Amendment: America's Blueprint for Tolerance*. These pages contain historical facts about the development of religious freedom in the United States. Briefly discuss this information. What were the established churches in the colonies? How were those churches related to the colonial governments? How did members of established churches treat people of different faiths who lived among them? Were they tolerant? What were the features of the Virginia Statute of Religious Liberty? Was Virginia tolerant of people of varying beliefs?

Next, distribute copies of **Student Handout 5—From Toleration to Freedom.** Read the introductory paragraph aloud and explain to the class that the Touro Synagogue is the oldest surviving Jewish house of worship in the United States. They should also know that Jews were commonly the object of discrimination and scorn in colonial America. Ask your students if they can explain the significance of the Touro Synagogue's location in Rhode Island.

Then, ask the class to read silently—or you may want to have students alternate reading aloud—the address by Moses Seixas to George Washington. What was Mr. Seixas saying? What had his congregation been deprived of in the past? What did he believe had changed with the new government headed by George Washington? What would the new government now allow? What did the new government "generously afford"?

Follow this discussion by having students read silently or aloud President Washington's reply to Moses Seixas. What was the "enlarged and liberal policy" to which Washington was referring? How had the definition of the word "tolerance" changed under the new Constitution? What was the only thing the president was requiring of the "good citizens"?

### *Activity 4—American Religion: Then and Now*

This activity will allow your students to learn more about religion and religious freedom—or the lack of it—in early American history. Your class will learn from reading pages 14-19 in *The First Amendment: America's Blueprint for Tolerance* that although many colonists fled England to escape persecution by its established church—the Church of England—they quickly established churches of their own in the New World.

First, ask students to name the official religions practiced in the colonies. Write them on the board. (They should mention the Puritan or Congregational religion in New England and the Church of England or Anglican faith in southern colonies.) Then, have them name some of the other colonial religious groups that were mistreated at the hands of the established churches. (The Puritans persecuted Quakers; Anglicans mistreated Baptists. You may want to mention others.) Spend a few minutes discussing the branding of Quakers in New England and the whipping of Brother Waller. What do students think about the level of religious tolerance, or intolerance, in colonial America?

Next, ask class members to speculate why some early colonies established official religions. What was the rationale behind an established religion? Does this action make the leaders of that colony intolerant? Why were they so intent on having everyone in their colony be of the same religion? Which colonies were the exception? (Delaware, New Jersey, Pennsylvania, and Rhode Island) What was unique about Rhode Island and Roger Williams? What was unique about Maryland and its Toleration Act of 1649?

Then, turn the discussion to modern times. Ask students if they see any evidence of religious intolerance in U.S. society today? Can they name religious denominations that were mistreated in the United States long after the passage of the First Amendment? (They might cite the Latter Day Saints [Mormons] who were driven first to Illinois and then to Utah by intolerant citizens. Catholics were not wanted in some regions, often because they were poor Irish or Italian immigrants. Many people mistreated Jewish immigrants to America and did not want them to settle in their neighborhoods. Others who were discriminated against were Jehovah's Witnesses and Seventh Day Adventists.)

Conclude this activity by dividing the class into four groups. Each group should meet, discuss, and write a one-page summary on one of the following "what ifs":

- What if all immigrants to America had been required to become members of the Anglican church, because that denomination was the established religion under the Constitution?
- What if the United States had an established church today and only members of that church were allowed to vote?

- What if Jews and Roman Catholics—thought by many early Americans to be undesirable—had not been allowed into the United States under national immigration laws?
- What if a certain percentage of income taxes paid by all Americans went to support an established church today?

When the groups have finished, ask a representative from each to read his or her group's summary. Allow the rest of the class to ask questions and comment on each summary. Ask students if they now have a better appreciation of the religious freedom they enjoy today when compared to the intolerance of colonial America.

### *Activity 5—Separationists vs. Accommodationists*

Before beginning this activity, students should have read "The Establishment Clause and Tolerance" in *The First Amendment: America's Blueprint for Tolerance*. Tell students that they are going to debate the issue of how high the "wall of separation" should be with regard to the Establishment Clause. Spend a few minutes discussing the positions of accommodationists and separationists. Separationists believe that the Constitution requires strict separation between church and state, because that is the best way to protect religious freedom. Accommodationists argue that government must make allowances for the role of religion in society in order not to be hostile toward religion.

Next, select debating teams to debate the following statements:

- Public schools should set aside a moment of silence each day for meditation or voluntary prayer.
- It is not the business of government to compose official prayers for any group of the American people to recite as part of a religious program carried on by government.
- Because the most important part of education is learning basic moral values, religion should be part of all school curricula—public and private.
- Student-led prayers over the school intercom and at graduation ceremonies violate the Establishment Clause, because the school is showing preference for religious speech.

Organize the debates in any way that works well for your situation. You may want to form small teams of students to debate each side of the issue, or you may want individuals to debate one another. Assign either the affirmative or negative position to the teams or individuals and give them time to prepare. Students, in preparing for their debates, should pay careful attention to the cases discussed in the book. Students can also use Close Up's book *The Bill of Rights: A User's Guide* for reference.

When groups are ready to debate, assign a moderator to keep the debate organized and moving. One student should serve as timekeeper for all speakers. Groups can decide how they are going to present their information. The affirmative side goes first, followed by the negative. After both sides have presented their cases for five to ten minutes, each will have two minutes for rebuttal.

You may want to appoint a panel of judges for each debate, or allow the whole class to judge the "winner." Or perhaps you could invite a panel of outside "expert" judges to come to your class. At any rate, ask the class which side they thought was most persuasive and why. Discuss the strongest arguments made by each side.

Were students swayed by emotional appeals or by arguments based on fact? What does this suggest about techniques of persuasion? Did the arguments change anyone's attitude or behavior regarding the issues? Do students now understand the reason why conflicts often arise over the Establishment Clause? Point out that while the Supreme Court has already made decisions concerning these issues, Americans continue to express conflicting opinions about them.

### *Activity 6—School Prayer*

Students should first read the "School Prayer" portion of "Religion and the Public Schools" in *The First Amendment: America's Blueprint for Tolerance*. Spend a few minutes discussing school prayer. Why do students think it has been a subject of Supreme Court decisions several times?

Then, introduce the case of *Wallace v. Jaffree*. Was Alabama justified in enacting a "moment of silence" law? What were the motives of the legislators in enacting such a law? Was Jaffree justified in challenging the law? Now, try to put the case into the context of tolerance with a short discussion session. Under the First Amendment, does the state of Alabama have a duty to be tolerant toward Ishmael Jaffree? Why or why not?

To study the case in depth, distribute copies of **Student Handout 6—Case Study: *Wallace v. Jaffree* (1985).** Divide students into pairs and have them work together to answer the questions at the bottom of the handout. You might want to do this as a homework assignment to allow students enough time to finish. When all have completed the assignment, go through each question.

Conclude by asking again if Alabama lawmakers had a duty to be tolerant toward Jaffree. Did any students change their minds after learning more about *Wallace v. Jaffree*?

### *Activity 7—Tolerance or Special Privileges?*

After students have read "Religion and the Public Schools" in *The First Amendment: America's Blueprint for Tolerance*, point out that government aid to private religious schools—known as parochaid—is also an Establishment Clause issue. Explain that generally the Supreme Court has followed the "child benefit theory." Under this theory, parochaid is permissible if the benefit goes more directly to the child than to the religious school. However, the Court's rulings have often been confusing: States may provide religious schools with buses to bring students to school, but not for field trips; with textbooks, but not films, maps, or globes; with sign-language interpreters for religious classes, but not teachers for secular classes.

Tell the class that in 1994, the Supreme Court considered another parochaid case, *Kiryas Joel School District v. Grumet*. That case dealt with whether the state of New York could, without violating the Establishment Clause, create a special school district to benefit disabled children in the village of Kiryas Joel—which was populated totally by very conservative Jews, the Satmar Hasidim. The Court held that such action violated "a principle at the heart of the Establishment Clause, that government should not prefer one religion to another, or religion to irreligion." Moreover, even though many constitutional scholars had predicted otherwise, the Court failed to overturn *Lemon v. Kurtzman*, which created a strict test for Establishment Clause issues.

Now, try to put the case into the context of tolerance with a short discussion session. Under the First Amendment, does the state of New York have a duty to be tolerant toward the Satmar Hasidim? Why or why not? Are there limits on that duty? At what point does the government, by showing tolerance for a religious group, instead give it special privileges—which then becomes intolerance toward other groups?

For more in-depth study, distribute copies of **Student Handout 7—Case Study: *Kiryas Joel School District v. Grumet* (1994).** Divide students into pairs and have them work together to answer the questions at the bottom of the handout. You might want to do this as a homework assignment to allow students enough time to finish. When all have completed the assignment, go through each question. Do students generally agree or disagree with the Court's decision?

### *Activity 8—Belief vs. Action*

Introduce the Free Exercise Clause to your students. Tell them that the government cannot discriminate against a particular religion; the government cannot enact policies that excessively burden religion. Whenever a group or individual believes that a government policy imposes a hardship on them because of their religious beliefs, they can challenge that policy as a violation of the Free Exercise Clause. Inform students that while the government cannot punish religious beliefs, it can punish actions based on those beliefs.

Distribute copies of **Student Handout 8—You Be the Judge.** Give students adequate time to complete the handout; you might want to use it as a homework assignment. When students have finished the handout, go through each item and ask several students to read their decisions and explain why they think as they do. Urge students with conflicting decisions to speak. After both sides have been heard, spend a few minutes talking about the actual case on which the scenario was based. The **Teacher Notes for Student Handout 8** on pages 31 and 32 will help you lead the discussion.

Next, have students read "The Free Exercise Clause" on pages 26-29 of *The First Amendment: America's Blueprint for Tolerance*. Did any students change their minds after reading the assignment? Why or why not?

## Teacher Notes for Student Handout 8—You Be the Judge

1. The government cannot outlaw the Christian Scientist belief in spiritual healing, but it can punish Christian Scientist parents who do not seek medical attention for their child.
   - Did students generally side with the law against the parents? What were their reasons?
   - How can religious people uphold their beliefs if they cannot act upon them?
   - Would it have made any difference if the person who was ill was the wife or husband rather than the child?
   - Would it have been better if society had shown tolerance for the actions of the parents? They were, after all, only following their religious beliefs.

2. In *Minersville School District v. Gobitis* (1940), the Supreme Court upheld a state law requiring the saluting of the flag. The Court said that "religious liberty must give way to political authority." But only three years later, in *West Virginia State Board of Education v. Barnette* (1943), the Court struck down flag-salute laws.
   - Did the class divide on this decision? Why?
   - Do students think that the fact that the decision was handed down during World War II might have made a difference?
   - Were Jehovah's Witnesses the victims of intolerance in this case?
   - Can students think of other incidents where minority religions have been treated with intolerance?

3. In *Reynolds v. United States* (1879), the Supreme Court upheld Reynolds's conviction, saying that the Free Exercise Clause did not protect actions that were "violations of social duties or subversive of good order."
   - Would most students have convicted Reynolds? Why?
   - Did Reynolds's actions harm other people? Why or why not?
   - Did the law discriminate against Reynolds because he was a Mormon?
   - Many countries today allow men to have more than one wife. Why is this not permitted in America?

4. In *Wisconsin v. Yoder* (1972), the Supreme Court held that the Amish did not have to comply with a Wisconsin compulsory attendance law. The Court said that the "state's interest in universal education" did not outweigh the free exercise rights of the Amish.

Students should first read "Not Violations of Free Exercise" on page 28 of *The First Amendment: America's Blueprint for Tolerance*. Remind them that in each of the cases mentioned, the Supreme Court made a clear ruling about the constitutionality of a particular action. However, also remind them that there was another side in each case, arguing that the Court should have made a different decision. Briefly discuss each case and make sure students understand what it was about and the effect of the Court decision.

**TEACHER NOTES FOR STUDENT HANDOUT 8 (CONTINUED)**

- Did students believe the Amish children should attend school after the eighth grade? Why or why not?
- Will the children be forced to become Amish as adults if they cannot receive higher education?
- Should children be allowed to exercise religious beliefs that differ from those of their parents?

5. In *Employment Division v. Smith* (1990), the Supreme Court upheld an Oregon law prohibiting the use of peyote, a drug some American Indians use in religious ceremonies.
   - Did the students generally agree in their decisions about this case?
   - How does defendant Smith's use of peyote in a religious ceremony differ, for example, from another faith's use of alcoholic wine in a ceremony?
   - Do students think that the case would have turned out differently if Smith had not been an American Indian?
   - What examples of tolerance or intolerance can students cite in this case?

6. In *Goldman v. Weinberger* (1986), the Supreme Court upheld the military regulations regarding dress. The Court said that the military's interest in uniformity and discipline outweighed an individual's free exercise rights.
   - Do students think a Jewish military officer should be allowed to wear a yarmulke? Why or why not?
   - How does a Jewish officer's yarmulke interfere with military discipline?
   - If Jewish officers were allowed to wear yarmulkes, should Sikhs be allowed to wear turbans and American Indians be allowed to have long hair?

Then, ask each student to write a one-paragraph argument taking the stance opposite the Court's decision. In other words, they should argue that the government should not be able to force Amish people to pay Social Security taxes or that a Jewish soldier should be allowed to wear a yarmulke. After students have finished writing, ask several to read their arguments aloud. Discuss why the Supreme Court ruled that these government actions were not violations of the Free Exercise Clause.

### *Activity 10—Compulsory Education*

Begin by having students read "Compulsory Education" in *The First Amendment: America's Blueprint for Tolerance*. Spend a few minutes discussing compulsory education. Should young people be required by the states to attend school until they reach a certain age? Is that the case in your state? Should there be exceptions? Introduce the case of *Wisconsin v. Yoder*. Was Yoder justified in doing what he did? Was the state justified in prosecuting him? Did he violate state law?

To study the case in depth, distribute copies of **Student Handout 9—Case Study: *Wisconsin v. Yoder* (1972).** Divide students into pairs and have them read and work together to answer the questions at the bottom of the handout. You might want to do this as a homework assignment to allow students enough time to finish. When all have completed the assignment, go through each question. Do students generally agree or disagree with the Court's decision?

To extend the learning, compare the *Yoder* case to *Kiryas Joel School District v. Grumet* (1994), which is included in Activity 7. How are the cases alike? (They both involve religious groups that seek to follow traditional ways and remain apart from modern society.) How are they different? (In the *Yoder* case, a general government law that applies to everyone is held to place a burden on a religious group in violation of the Free Exercise Clause; in the *Kiryas Joel* case, the government passes a special law that benefits only a particular religious group, which violates the Establishment Clause.) At what point does accommodation, or showing tolerance for, a religious group become special privileges—which is then being intolerant toward other groups?

### *Activity 11—Free Exercise for Clothes?*

Begin this activity by reminding students that in many societies, culture and religion are often interconnected. Thus, particular types of clothing and accessories are connected to religious practices. Next, ask students to describe the religious clothing of certain cultures throughout the world. Some examples may be the yarmulke (skullcap) worn by Jewish males, the orange robes worn by Buddhist monks, the chadors (veils) worn by Muslim women, and the habits worn by Catholic nuns. Ask students to suggest reasons why certain religions require its members to follow such a dress code.

Distribute copies of **Student Handout 10—*Kirpan:* Weapon or Symbol?** This handout explores whether Sikh students, who wear a *kirpan* (a dull-edged dagger) as a religious symbol, should be allowed to wear them to school. Ask students to read the handout and choose one argument to support. The response should be two to three paragraphs long and should have examples that support the argument.

Give students twenty minutes to complete this activity. Then, ask for volunteers to read their essays. Ask students to tell the class their reasons for choosing a certain position. Do students think that both arguments are valid?

### *Activity 12—Wrapping Up*

Freedom of religion is a complex right. To make sure students recognize the importance of this right, and as a unit review, have students complete **Student Handout 11—Wrapping Up.** Give students twenty minutes to finish. Then, ask for volunteers to read their responses.

## Enrichment Activities

1. Introduce the activity by showing the class a picture of the flags of Saudi Arabia and Israel. Ask students if they can guess what the symbols on the flags mean. The Israeli flag contains the Star of David, a Jewish religious symbol. The Saudi flag carries an inscription from the Koran, Islam's holy book, that says: "There is no God but God (Allah), and Muhammad is the prophet of God." Ask why a religious symbol would be on a national flag. What kind of relationship between church and state might that indicate?

Ask students what they think it would be like to live under a such a system. How would their lives be different? Do they think the Saudi or Israeli society is tolerant of nonbelievers?

Have students—either individually or in groups—research and report on Saudi Arabia and Israel. They should find out about each nation's system of government, its tolerance of "outsiders," its relationship with the United States, and so forth. You might want students to investigate other nations' governments and their tolerance of people with certain religious beliefs. Interesting countries for study might include China, Iran, Ireland, Kuwait, Sudan, and Vatican City.

**2.** The Establishment Clause of the First Amendment restricts the relationship between the government and the church by forbidding the government from creating, or establishing, an official church. It also forbids the government from supporting one religion over another, or religion over nonreligion. Ask students to write a one- to two-page essay on what they think "separation of church and state" means. Give students twenty-five minutes to complete this activity. After everyone has finished, ask for volunteers to read their essays aloud in class.

**3.** Write the word "blasphemy" on the board. Can students define it? *Webster's* says "profane or contemptuous speech, writing, or action concerning God or anything held as divine." Is blasphemy a crime in the United States? Then, ask them to read "Death to Blasphemers!" on page 20 in *The First Amendment: America's Blueprint for Tolerance*. Can Americans "blaspheme" without being punished? Ask students what they think accounts for the differences in our society and Islamic society regarding blasphemy. Which of the two societies reflects a greater involvement of religion with government?

To extend this activity, ask students to read the section in *The First Amendment: America's Blueprint for Tolerance* entitled "Colonial Practices" on pages 15-17. Are some of the actions of colonial religious groups similar to those of Muslims in Pakistan or Iran?

To have your students learn more about Muslim beliefs, invite a Muslim to speak on the subject of blasphemy and the incidents in Pakistan or the death sen-

tence imposed on Salman Rushdie. How does the speaker feel about religious tolerance in the United States? How does the speaker feel about religious tolerance elsewhere in the world?

4. Invite to your classroom a panel of experts from your community to discuss the issue of prayer in public schools. Look for thoughtful speakers from both sides of the issue to tell why they are for or against prayer in the public school. Likely sources would include members of the clergy, college professors, legal scholars, members of lobbying or advocacy groups, and the like. Make sure you have equal numbers of participants from both sides and establish some ground rules for the discussion. Allow everyone time to speak and give their opinions and give everyone a chance to rebut comments from the other side. Try to reserve some time at the end of the discussion for students to ask questions.

# UNIT 3

## *Freedom of Speech: Freedom for the Thought That We Hate*

### STUDENT OBJECTIVES

After completing the activities in this unit, students should be able to:

1. define "speech."
2. relate freedom of speech to tolerance.
3. describe the various forms that speech can take.
4. discuss censorship and its relationship to freedom of speech.
5. analyze Supreme Court cases on freedom of speech.
6. list and describe limits on free speech.
7. understand the relationship between tolerance and responsibility.
8. relate hate speech codes and hate crimes to freedom of speech.
9. compare the freedom of speech of students in school to that of adults in other settings.
10. analyze the limits on free speech in school-sponsored activities and apply those principles to a specific case study.
11. evaluate whether protecting intolerant speech ensures tolerance.

### TERMS AND CONCEPTS

censorship
content neutrality
defamation
Espionage Act of 1917
expressive conduct
fighting words
free expression
hate speech
libel
marketplace of ideas
obscenity

Sedition Act of 1798
slander
symbolic speech

Some of these terms and concepts may be unfamiliar to your students. Understanding the meaning of each is important for comprehension of the subject. Assign each student one item from the above list to define. Ask them to write their definition on a strip of paper. Then divide the class into two or more teams. Have teams alternate drawing one of the definitions out of a box and trying to identify the term it defines. Award each team one point for a correct answer. If a team cannot name the correct term, another team may try to identify it for two points. At the end of the game, the team with the most points wins—and the entire class will have reviewed all the key terms and concepts.

## Student Activities

### *Activity 1—Introducing Freedom of Speech*

To introduce the unit, ask students what they think the term "freedom of speech" means. In the short discussion that follows, students should come away with the understanding that freedom of speech is essential to democratic government. Without free speech, citizens cannot debate the actions and policies of their elected officials nor can they be well informed about current issues. While freedom of speech is important for protecting ideas or speech involving politics, it is also important for protecting ideas about art, music, literature, science, business, and more. The government may not prohibit the right of free speech; however, many Americans are confused about what constitutes "speech." Does freedom of speech mean spoken words alone, or does it also include actions, such as wearing a black armband or burning a flag? Also, students should understand that the right to free speech has been limited by the courts.

After leading the discussion, have students write a half-page response that completes the following: "Freedom of speech means. . . ." Tell them they have ten minutes to complete the paragraph. When time is up, ask for volunteers to read their papers. It is not necessary to discuss students' comments at this time. This exercise will merely get them thinking about freedom of speech.

### *Activity 2—Freedom for the Thought That We Hate*

Before students read the "Freedom of Speech" chapter in *The First Amendment: America's Blueprint for Tolerance*, write the following sentence on the board:

> ***The First Amendment is not designed to protect free thought for those who agree with us but freedom for the thought that we hate.***

After students have had a few minutes to read and think about the quote, ask them to write in a sentence or two why they agree or disagree with the statement. This should only take a short time.

When everyone is finished, ask for volunteers to read what they have written. Urge students with differing views to speak. When most student viewpoints have been heard, dissect the sentence and talk about what it means. What is free thought? Is it easy to protect free thought for those who agree with us? How about for those who disagree with us? Why should we protect the free thought of people who say things we hate? Do we have the right to expect the same from them?

Ask students what they think this discussion has to do with tolerance. Should American society allow free speech to people who say things we hate? Is that important in our society? Why don't we just legally muzzle people who say things that irritate or enrage the majority of the population?

### *Activity 3—Is It "Speech"?*

Remind students of the definitions of free speech they wrote in Activity 1. Then, distribute **Student Handout 12—Is It "Speech"?** After students are finished, go though each item on the handout and discuss answers and reasons for them. (Teacher note: Wait until all items have been discussed before revealing the correct answers.) Would any students change their definitions of freedom of speech after the class discussion? In what ways? What difficulties did they have while arriving at a definition of freedom of speech? Remind students that just as they disagree about what constitutes free speech, so do many Americans disagree about what the words in the Constitution actually mean.

Finally, reveal the correct answers to each item on the handout. Answers are in the box below. Were students surprised by any of the correct answers? Are there any with which they still disagree?

### Answers to Student Handout 12—Is It "Speech"?

1. No—This action would jeopardize public safety.
2. Yes—Verbal exchange of ideas is one of the most clearly protected freedoms.
3. No—The First Amendment does not apply in privately owned facilities.
4. Yes—The Supreme Court ruled in *Tinker v. Des Moines School District* (1969) that students' freedom of speech could only be infringed upon if it disrupted the school's educational mission.
5. Yes—This right is protected under both freedom of speech and freedom of assembly.
6. No—The Supreme Court has ruled that students may not use sexually suggestive language in school, although adults could use such language in similar circumstances.
7. No—The Supreme Court has ruled that such verbal abuse directed toward a specific person is not protected because it promotes violence rather than the free exchange of ideas.
8. Yes—The Court says freedom of speech also grants one the freedom not to speak.
9. No—The Court has ruled that slander and libel are not protected speech.
10. Yes—The Court has ruled that such speech is allowed as long as it does not encourage immediate and specific unlawful actions.
11. Yes—Such a march is legal as long as it is peaceful and orderly.
12. Yes—The Court has ruled that flag burning is symbolic speech protected by the First Amendment.

### *Activity 4—Censorship*

Write the word **censorship** on the board. Then, in a brainstorming session, ask students to call out words or short phrases that come to mind when they think about censorship. Write responses on the board as they are mentioned. Do not pause to discuss any response; you will do that later. When students have run out of responses, spend a few minutes discussing the items on the board. Now ask class members to read the section in *The First Amendment: America's Blueprint for Tolerance* entitled "A History of Censorship." The section is short and should not take long to read.

After students have finished reading, ask them to define censorship. The section they have just read called censorship "the official denial of free expression." Discuss acts of censorship they may know about: banning books or movies, burning books, laws against certain types of speech, and so forth. Relate censorship to tolerance. Is widespread censorship an action of tolerance or intolerance? Are there times when society should not show tolerance toward offensive thoughts? What should happen if members of society cannot agree on what speech should be protected and what should not?

### *Activity 5—Flag Burning and the First Amendment*

Before students read the section under "Content Neutral" on page 35 of *The First Amendment: America's Blueprint for Tolerance*, bring up the issue of symbolic speech or "expressive conduct." Students should realize that symbolic speech is often not protected to the extent that pure speech is. In other words, the Court has found that certain types of expressive conduct do not fall under the protection of the First Amendment. One example of symbolic speech is flag burning. Ask students why they think anyone would burn an American flag in public. What statement are such people trying to make? Should flag burning be considered a form of speech?

Next, turn to the case of Gregory "Joey" Johnson. Explain that Johnson burned a flag at the 1984 Republican National Convention and was charged with and convicted of violating a Texas law prohibiting flag desecration. He believed his actions were protected by the First Amendment and took his case all the way to the U.S. Supreme Court. Distribute **Student Handout 13—Case Study: *Texas v. Johnson* (1989)** and have students read the

differing opinions. Ask students not to read about the case in the book until later, and if any of the students know the actual decision in this case, encourage them not to tell the rest of the class at this time.

Then, divide the class into several teams who will debate from opposite sides of the issue. Half of the teams will debate the view of Opinion A on the handout, and the others, Opinion B. Organize as many debates as are manageable. After teams have prepared and debates have been held, students should decide by a class vote which decision they think prevailed in the Supreme Court. Time may limit the number of debates you can have or the length of time each side will have to present their arguments and rebuttals.

Conclude by having the class read the section "Content Neutral" in *The First Amendment: America's Blueprint for Tolerance*. What decision did the Supreme Court make in this case? Were any students surprised? Concentrate on the last sentence in the section—the quote from the Court. What do students think the Court was saying? Why can't the government prohibit the expression of an idea simply because society finds the idea offensive or disagreeable? What protects Americans from being arrested for expressing themselves in a way that some do not like? How does the quote from the Court relate to tolerance?

### *Activity 6—Limits on Free Speech*

Before students read "Limits on Free Speech" in *The First Amendment: America's Blueprint for Tolerance*, distribute **Student Handout 14—Can You Say Anything You Want?** Give students a few minutes to complete Part I. After all have finished with Part I, go through each item and ask for responses. All six items are true. You need not spend much time discussing them.

Then, ask students to read "Limits on Free Speech" in the book. After they have finished, they should answer the questions in Part II of **Student Handout 14.** This will take them more time and might be appropriate as a homework assignment. When all have finished, discuss each item in Part II. Are students surprised by what they can and cannot say or do according to the First Amendment? Urge students with differing opinions to express their thoughts.

Now that your class has a clearer understanding of the limits on free speech, organize mock talk shows with a moderator and two guests. Each of the guests will

represent the opposite side of an issue. Each pair of guests should discuss both sides of one of the following statements:

- Much of what we see on television or read in books and magazines should be considered obscene and should thus be prohibited by law.
- Codes against hate speech made on the basis of race, religion, gender, or sexual orientation violate freedom of speech because those codes determine what is "politically correct."
- School officials should have the right to limit student speech under any circumstances if the speech is disruptive or inappropriate.
- High school students should have the same First Amendment rights as adults in issues of free speech and expression.

Give students adequate time to prepare their arguments before they appear in the mock talk show. The moderator for each panel also needs to prepare potential questions to keep the discussion lively. You may want to set a time limit; however, it will likely become obvious when guests have exhausted their thoughts and have little more to say.

Conclude each talk show by asking the "studio audience" (the rest of the class) to indicate by a show of hands which guest presented the best argument.

### *Activity 7—Tolerance and Responsibility*

Direct students' thinking toward tolerance and responsibility. Remind students that, in a tolerant society, citizens must respect the rights of others when exercising their own rights. Begin by having students say—at the same time and in a loud voice—what they think is the biggest problem now facing America. Because everyone is talking simultaneously, it will be difficult to understand what each person is saying. Ask students to think about what just happened:

- Were you able to understand everyone? Why not?
- Was this exercise an example of free speech? Why or why not?
- Was your opportunity to express your opinion limited? How so?
- Is freedom of speech meaningful if no one exercises the responsibility to listen?

Now, divide students into groups of three and distribute **Student Handout 15—Tolerance and Responsibility.** Students will discuss two scenarios involving freedom of speech. After all groups have finished the handout, lead a class discussion on their answers. What conclusions have the students reached on tolerance and responsibility?

### *Activity 8—Freedom of Speech on Campus*

Direct the class's attention to freedom of speech on college campuses. Remind the class that college students are adults and therefore have greater free speech rights than high school students. Mention to the class that colleges and universities are supposed to be places where free inquiry, debate, and expression are highly valued. Professors and students are urged to question, explore, and comment on a variety of issues. The ideal university is a place where differing viewpoints are not suppressed. Tell the class that many people today question whether college campuses are havens for free speech because of the rise of codes prohibiting hate speech.

In *R.A.V. v. St. Paul* (1992), the Supreme Court unanimously struck down a St. Paul, Minnesota, law prohibiting hate speech because the law punished speech based on its content. However, four justices said that they might uphold a law banning hate speech as "fighting words" if the law was very narrowly drawn so that it did not include protected speech.

Distribute copies of **Student Handout 16—The College Campus: Friend or Foe of Free Speech?** Divide the class into four groups and give them fifteen minutes to complete the handout. (If time does not permit, you may want to use the handout as a homework assignment.) Ask one student from each group to serve as spokesperson. After all groups have finished the activity, have each spokesperson share his or her group's proposed hate speech code. Ask students if they think the four justices from the *R.A.V.* decision would uphold their hate speech codes. (Note: "Fighting words" must be speech directed at a specific individual, not just offensive language in general.)

### *Activity 9—Hate Crimes*

Write the term **hate crimes** on the board. Ask students if they can define the term. (Hate crimes are crimes motivated by race, color, creed, religion, gender, or sexual orientation.) Can students think of instances of hate

crimes in their own community? Do they think hate crimes are on the rise around the world, including in the United States?

Next, ask every student to write a report on hate crimes that includes examples from their communities, their families, or their own personal experiences. They should consult their local law enforcement agencies for statistics. The FBI is required to keep statistics on hate crimes nationwide. Students should find out if their local police report hate crimes to the FBI. Why or why not?

Write the following questions on the board to help students structure their reports:

- What types of people are involved in the hate crimes?
- What motivates the hate crimes?
- What might be some explanations for the tension between the people involved in the hate crimes? Are there social, political, or cultural differences between the groups involved?
- How can the government help fight hate crime?
- How can private citizens help fight hate crime?

To extend the learning, invite a speaker to your class to discuss hate crimes in your community or your state. The speaker could be a law enforcement officer, a leader of a group that has been the victim of hate crimes, or a local government official. Ask the speaker to suggest to your students what they can do to combat hate crimes.

### *Activity 10—Speech in Schools*

Have students read "Speech in Schools" on pages 40-42 of *The First Amendment: America's Blueprint for Tolerance*. Then, distribute **Student Handout 17—Case Study: *Hazelwood School District v. Kuhlmeier* (1988).** Explain to students that the *Hazelwood* case applies to student speech that is sponsored by a school, whereas *Tinker v. Des Moines School District* (1969) applies to independent student speech that occurs at school.

After students have finished the handout, lead a discussion based on the case. What types of student speech are sponsored at your school? (These could include a newspaper, yearbook, school play, art exhibit, campaigns for class officers, etc.) How do school officials exercise control over these activities? Are there other types of student speech that occur at school over which officials have little or no control? What are they? Should the rights of stu-

dents at school be the same as the rights of adults at work? (Point out that the First Amendment does not apply to private employers, so unless adults work for the government they have no First Amendment rights in the workplace.) Why does the First Amendment apply to students at public schools, if not to adults at work? (Public schools are run by the state, so government action is involved.)

### *Activity 11—You've Got to Stand for Something*

Have students read the box on page 41 of *The First Amendment: America's Blueprint for Tolerance* entitled, "You've Got to Stand for Something," which tells the story of Kathryn Sinclair. Ask students what their reaction is to how Kathryn was treated by her fellow classmates. Do students understand why her classmates behaved this way? Did Kathryn's classmates show tolerance toward her? Did they respect her right to freedom of speech, even if they disagreed with her? How should Kathryn's classmates have behaved differently?

Distribute **Student Handout 18—Kathryn's Graduation Speech.** Have students complete Part I, then lead a discussion based on their answers. Does your school distribute guidelines for student speakers at graduation? If so, how do these guidelines compare to those used by Kathryn's school? Would your school's guidelines be upheld under *Hazelwood?*

Now have students complete Part II of the handout, in which they read excerpts from Kathryn Sinclair's graduation speech. After discussing students' answers to the questions, ask them if they would have applauded Kathryn's speech if it had been delivered at their high school graduation. What message is Kathryn trying to give them? Do they agree with her message? What role do people like Kathryn Sinclair, who are willing to be unpopular to stand up for their beliefs, play in protecting First Amendment freedoms for everyone?

### *Activity 12—Marketplace of Ideas*

Begin by having students read the section entitled "Free Speech for Me, But Not for Thee?" on pages 42–44 of *The First Amendment: America's Blueprint for Tolerance.* After students have finished reading, have them write one pro argument and one con argument for each of the following statements.

- The government should allow speech that promotes offensive ideas, because suppressing speech would be even more damaging to society.
- The best way for citizens to respond to offensive speech is with more speech, or counterspeech.
- Protecting intolerant speech is tolerant.

When students have written their arguments, have them stand and read a pro argument for the first statement, followed by a con argument. Pause periodically and ask students to comment on what is being said. When arguments for all three statements have been exhausted, conclude with a discussion about promoting offensive speech. What do students think about allowing Nazis to march in a predominantly Jewish city? Or allowing Ku Klux Klan members to demonstrate in a public place? Ask students what the last line in the book means: "Under the First Amendment, there is no such thing as an illegal idea."

## Enrichment Activities

1. After students have read the introduction to "Freedom of Speech" in *The First Amendment: America's Blueprint for Tolerance*, ask them to look at the cartoon on page 31. Who are the characters depicted in the cartoon? What does the cartoon say about "freedom for the thought that we hate"? Under the Bill of Rights, can "we exclude disgusting rap groups and crazy flag burners" as one character asks? Why not? Were the framers of the Bill of Rights thinking about rap groups and flag burners when they penned the document? What kinds of "speakers" did they have in mind?

2. Students should read "The Espionage Act of 1917" on page 34 of *The First Amendment: America's Blueprint for Tolerance*. Spend a few minutes discussing the act. How was the 1917 act related to the Sedition Act of 1798? What was the Espionage Act designed to do?

   Tell the class about Eugene Debs, a prominent labor leader who ran for U.S. president five times on the Socialist Party ticket. In 1918, Debs was sentenced to ten years in prison for violating the Espionage Act; he campaigned for president in 1920 from prison.

Eugene Debs went to prison for making statements that some officials thought had a "tendency" to urge young men to resist the draft.

Now, point out the quote from Woodrow Wilson in the box on page 39 of the book. Emphasize that Woodrow Wilson was the president when Debs was convicted and that Wilson supported the Espionage Act. Is Wilson's quote consistent with his actions toward Debs and other opponents of World War I? Would critics of a president's wartime actions be protected by the First Amendment today?

Divide the class in half and have each student in one half write an essay about civil liberties during World War I, while students in the other half write about Eugene V. Debs. Give students time to do some independent research on their topics. After essays have been completed, ask for volunteers to read what they have written. In what ways did civil liberties suffer during World War I? What brought about such attacks on the civil liberties of Americans during that war? Why was Debs an easy target? Ask students to speculate whether they think similar laws could be passed in the United States today, if the nation found itself in a national emergency like World War I.

**3.** Ask students to read the box on page 33 in *The First Amendment: America's Blueprint for Tolerance* entitled "No Free Speech for Congress." Briefly discuss Matthew Lyon and his accusation against President John Adams that got Lyon sentenced to prison for four months. What do students think about what happened to Lyon? Then, divide students into pairs and have them do some research on comments made today by members of Congress toward the president or toward one another. They should use newspapers and newsmagazines as sources of information, as well as comments made on the evening news or other television programs. Another source for comments is C-SPAN. If your students have access to the C-SPAN networks on cable television, urge them to watch floor debates in the House and Senate and be alert for comments in which one member may say something uncomplimentary about another member or about the president.

After students have had enough time to gather their information, ask each pair of students to tell the class

the comments they have recorded. Conclude by comparing today's comments to those of Matthew Lyon almost 200 years ago. Does freedom of speech prevail in American politics? Did students find comments made today that they would consider more harsh than those made by Mr. Lyon? Would they like to see rules that would make politicians tone down their comments? Why or why not? Would such rules violate the First Amendment?

**4.** Have students find and clip or photocopy recent magazine and newspaper articles that deal with free speech issues. When they bring them to class, ask the class members to tell about their stories and how they apply to free speech. Pin each article to the bulletin board. To extend this activity, assign students one of the recent stories and have them write a report in which they apply what they have learned about Supreme Court interpretations of the First Amendment to this particular incident.

**5.** Not all nations guarantee freedom of speech to their citizens. Ask students to research countries that do not guarantee freedom of speech or that limit it, and then inform the rest of the class of their findings. They should talk about the ways speech is regulated in a particular country and speculate why freedom of speech is not granted or is limited. They should also mention possible punishments for expressing an unwelcome or unlawful point of view. Some countries to consider are Canada, China, Cuba, Iran, Iraq, Israel, North Korea, the Republic of China (Taiwan), Saudi Arabia, and the United Kingdom.

**6.** Ask students to consider the following scenario. Some residents of a Berkeley, California, community opposed the building of apartments for homeless people in their neighborhood. The residents passed out flyers and petitions saying that crime would rise and property values would fall if the homeless people lived in the community. The residents also filed a lawsuit to prevent the construction of the building. The local office of the U.S. Department of Housing and Urban Development (HUD) threatened the three most vocal Berkeley residents with fines of $50,000 each. Under the Fair Housing Act, HUD said, it could punish such "coer-

cion, intimidation, and interference" with regard to the homeless people.

Tell students that they are to write a memo to the secretary of HUD about the legality of HUD's action in this case. Students should decide whether or not HUD's policy violates the First Amendment and explain why. They should then suggest to the secretary how best to proceed in this matter. (Note: In 1994, HUD decided that it would no longer investigate fair housing complaints that involved First Amendment activities—such as letters to the editor, leaflets, or community meetings.)

# UNIT 4

## *Freedom of the Press: A Cantankerous Press Must Be Suffered*

### STUDENT OBJECTIVES

After completing activities in this unit, students should be able to:

1. evaluate the rights and responsibilities of freedom of the press.
2. discuss why freedom of the press is important in a democracy.
3. form and defend positions on issues involving freedom of the press.
4. apply a historical understanding of freedom of the press to contemporary issues.
5. evaluate restraints on freedom of the press during wartime.
6. analyze Supreme Court decisions on freedom of the press.
7. apply the standards of *Hazelwood v. Kuhlmeier* (1988) to the student press in their own school.
8. understand how freedom of the press relates to tolerance.

### TERMS AND CONCEPTS

actual malice
cantankerous
censorship
extortion
free press
gag order
graft
injunction
libel
prior restraint
public figures
scandal sheets
Sedition Act of 1798
seditious libel

Some of these terms and concepts may be unfamiliar to your students. Understanding the meaning of each is important for comprehension of the subject. As a means of getting students to use each of the terms on the list above, assign one or two students (depending on the size of your class) one term from the list to use in a complete sentence. Then place all fourteen (or twenty-eight) sentences on a sheet of paper, make a copy for each student, and ask them, working individually or in groups, to write a one-page story using all the sentences. They may modify each sentence slightly to make them fit in their story. Tell them not to spend a lot of time polishing the story; the goal is to get each sentence in somehow, even if the story does not make perfect sense. When all have finished, ask for volunteers to read their stories in class.

## Student Activities

### *Activity 1—Introducing Freedom of Press*

To get students to think about freedom of the press, write the following quotation from Thomas Jefferson on the board:

> ***Were it left to me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter.***

Read the quote aloud and spend a few minutes discussing it so that all class members know exactly what Jefferson was saying. Then have all students write two paragraphs: one agreeing with Jefferson and one disagreeing with him. When students have finished the writing assignment, ask one individual to read first his or her agreeing paragraph, followed by another student reading his or her disagreeing paragraph. After students have heard both sides, pause to ask the class which argument is best. Which makes the most sense? Do this with several pairs of students until most arguments have been made for both sides. Students should come away from this activity with an appreciation of what newspapers (and other media) do for our society.

### *Activity 2—Censorship and the Press*

Begin this activity by asking students to brainstorm for a few minutes about what they think American society would be like if media coverage was completely censored. Write their responses on the board under the heading "Complete Censorship." Then, ask the class to brainstorm about what American society would be like if the press were allowed to report without any restrictions. Write these responses on the board under the heading "Unrestricted Freedom of the Press." Which position is more likely to help create a tolerant society in the United States? Why?

Ask students to suggest where the United States stands today on the issue of freedom of the press. Is this an ideal position? If not, how should it be changed? Should there be more of a balance between censorship and total freedom? How could this be created?

Next, ask students to name some newspapers and discuss the types of stories that these papers cover. Some examples may include local papers or range from prize-winning publications such as the *Los Angeles Times* or the *New York Times* to tabloids such as the *National Enquirer*. Discuss differences in news reporting between these types of papers. Ask students why such a diverse group of newspapers thrives today. Should sensationalist tabloids be banned? Why or why not?

Then ask students to discuss any controversies they know of that have developed because of certain stories in newspapers, radio, or television. (Some students may suggest untruthful stories or stories based on unreliable sources.) Now, have students read the chapter "Freedom of the Press: A Cantankerous Press Must Be Suffered" in *The First Amendment: America's Blueprint for Tolerance*. Distribute copies of **Student Handout 19—Censorship and the Press.** Give students fifteen minutes to complete the handout. After everyone has finished, ask students to share their responses with the class. Expand any issue from the handout that stirs controversy in the class.

### *Activity 3—Zenger to the Rescue*

Discuss the story of John Peter Zenger on page 47 of *The First Amendment: America's Blueprint for Tolerance*. Compare Zenger's situation to that of journalists today. Would a reporter be sentenced to death for telling the truth about a state governor's mistakes? Divide the class into

four groups and ask them to perform five-minute skits reenacting Zenger's trial, but in a contemporary setting. Give students fifteen minutes to prepare their skits. After the performances, analyze the presentations. How were the performances similar? How were they different? What new insights did the students learn from the dramatizations? Do students understand how radically different journalism in Zenger's era was from that of today? What accounts for that difference?

### *Activity 4—Sedition or Criticism?*

Discuss the story of Matthew Lyon on pages 47-48 of *The First Amendment: America's Blueprint for Tolerance*. Compare Lyon's situation with that of John Peter Zenger. How are they similar? How are they different? Why would Congress have passed the Sedition Act of 1798, given Zenger's case sixty years earlier? Now, ask students to write a one-page letter to the editor as if it were written by Matthew Lyon in prison. Have them include comparisons to Zenger's case in the letter. Ask volunteers to read their letters aloud. Can students imagine such a letter being written by a U.S. representative today? Why or why not?

### *Activity 5—Restricting the Press in Wartime*

Review the major points of *Near v. Minnesota* (1931), which is discussed on pages 48-50 of *The First Amendment: America's Blueprint for Tolerance*. Remind students that under *Near*, the First Amendment prohibits prior restraint—censoring information before it is published—except in extraordinary circumstances. One of the exceptions that *Near* gives is in wartime, such as publishing the "sailing dates of transports or the number and location of troops."

Tell the class that Americans disagree about what kinds of limitations should be placed on the press during wartime. For example, during the Vietnam War, the media were relatively unrestricted. Some Americans believe that the media were able to refute official military information and persuade Americans to end the war sooner. Other people argue that the media interfered with the military and undermined an American victory.

Arrange students into four groups and distribute copies of **Student Handout 20—Prior Restraint in Wartime.** Ask students to read the handout and answer the questions that follow. Give the groups fifteen minutes to complete

the activity. After all groups have completed the activity, ask a representative from each group to share responses.

### *Activity 6—Libel and Public Officials*

Ask students to define libel. (Libel is the publication of false statements that damage a person's reputation.) Tell students that criticism of public officials, even if untrue, is not considered libel, but a legitimate use of free speech—so long as the error was not made intentionally or recklessly. Remind students that this protection was established in the landmark case of *New York Times v. Sullivan* (1964), in which the Supreme Court ruled that false statements about public officials are libelous only if made with actual malice. The Court later extended this principle to apply to public figures as well.

Distribute **Student Handout 21—Case Study: *New York Times v. Sullivan* (1964).** Have students work in pairs to complete the questions at the end of the handout. When they have finished, discuss the questions in class. Do students understand the significance of this case and how it affected coverage of the civil rights movement? Do students understand that massive libel judgments impede the press from covering controversial issues?

### *Activity 7—High School Journalism*

Review the case of *Hazelwood School District v. Kuhlmeier* (1988), which was discussed in more detail in the freedom of speech unit. Remind students of the authority that *Hazelwood* gives school officials in school-sponsored expressive activities, such as a high school newspaper. Is there a student newspaper at your school? Why or why not? What does this fact indicate about student expression at your school?

If your school has a student newspaper, ask the editor to speak to your class. The editor's speech should be sure to answer the following questions:

- Does the principal review material before the paper is published?
- Does the adult sponsor discourage students from writing certain articles?
- Is this censorship? Why might an adult review all work?
- What is the difference between censorship and editing?

- Under *Hazelwood*, are the constitutional rights of the students violated by these actions? If so, under what circumstances?
- What problems might occur because of these actions?
- What problems might result if no adult reviewed subject matter?
- Should the same standards apply to high school journalists as to professional journalists?

To wrap up, point out that several states (among them California, Colorado, Iowa, Kansas, and Massachusetts—as well as Dade County, Florida) have passed laws protecting the right of students to control the content of their publications—subject to the same restrictions on obscenity and libel as professional journalists. These state laws give students more freedom than the *Hazelwood* ruling. Does your state have such a law? If not, interested students can write their state legislators to support a similar law in your state. For more information on these laws and on high school journalism in general, contact:

Student Press Law Center
1101 Wilson Boulevard
Suite 1910
Arlington, VA 22209
703-807-1904

***Activity 8—All the News That's Fit to Print***

Ask class members to bring copies of many different kinds of newspapers to class. Your community, depending on its size, probably has at least one mainstream daily or weekly paper. However, students should be able to find papers from other nearby cities, as well as national newspapers like the *Christian Science Monitor*, the *New York Times*, and *USA Today*. Urge them to bring "supermarket tabloids" as well. Display all the newspapers and spend a few minutes comparing their form and style. Ask students to point out obvious differences—perhaps in reporting the same story. Which papers tend to stick to the facts? Which tend to sensationalize? Which may be described as outrageous?

Ask class members if they can find stories that could be libelous. Why don't more people sue such "scandal sheets"? Why do Americans tolerate such papers? Could

we get along without them? Why do people buy them? Finally, ask students to speculate why there is such a broad spectrum of newspapers in this country. How does this fact help ensure tolerance in America?

## Enrichment Activities

1. Have students read through a newspaper, marking the articles that would be censored by a government that did not allow freedom of the press. Ask for volunteers to give a summary of one article that fits this category, telling why the article would be censored. Or, have students clip newspaper or magazine articles about censorship in other countries. How does the press operate in these countries? Contrast the international press with that of the United States.

2. Invite a newspaper or television reporter to your class to discuss the freedom and responsibilities of the press. Have students prepare questions for the speaker in advance. Ask the reporter how he or she thinks a free press helps ensure tolerance in America.

# WRAPPING UP

## *Tolerance In Action*

Have your students read "Tolerance In Action," the final chapter in *The First Amendment: America's Blueprint for Tolerance*. An effective way to allow them to hear the concluding message may be to ask individuals to read paragraphs aloud in class. However, the method is up to you. When all have finished reading, write the last paragraph of the book on the board. It reads as follows:

> ***The First Amendment is America's blueprint for tolerance; it tells Americans what our nation's house should look like. But it is still up to each of us as citizens to help build the house.***

Ask students what they think is the message in this paragraph. What does the author mean when she says it is up to us to help build the house? Why is it the individual's responsibility to spread the First Amendment's message of tolerance? Where does the practice of treating each other with respect begin? Do students need to practice tolerance in school? At home? At work? At play? What can they do to spread the message of tolerance in the community in which they live? What can they do to promote a more tolerant America? What can they do to promote a more tolerant world?

What follows are suggestions for activities that may help your students make sure that the First Amendment's blueprint for tolerance becomes a living part of their community and their world.

**TOLERANCE IN THE LOCAL COMMUNITY.** By now, your students should have heard the message that tolerance begins with them. Their relationship with the people around them is the smallest piece of a larger national and world picture. Now it is up to them to lead by example and carry the message to their school and community. The following suggestions will allow your students to examine their surroundings and to see the many faces in their community that may have a story to tell about tolerance.

***Religious Diversity I.*** Ask a committee of students to invite members of the clergy from various congregations in your community to speak to the class or to a school assembly about religious diversity. Of course, the diversity represented will depend on the size and makeup of your community, but it would be interesting for students to hear from speakers who represent the faiths mentioned in *The First Amendment: America's Blueprint for Tolerance*. They include Jews, Muslims, Roman Catholics, Quakers, Baptists, Jehovah's Witnesses, Seventh Day Adventists, Latter Day Saints (Mormons), and others. Invitees may appear in a group and conduct a panel discussion or speak individually. The way in which your program will be organized is up to you, but speakers should be prepared to talk about the history of intolerance against their denomination and what they see for the future.

***Religious Diversity II.*** To continue with the examination of religious diversity in your community, ask students to arrange for visits to various churches, temples,

and mosques in your community. Perhaps students who are members of certain congregations can take the lead in arranging the visits. Students will want to question the representatives of the congregations about the history of their faith and any instances of intolerance that they know about.

***Ethnic Diversity.*** Have a student committee invite representatives of ethnic groups present in your community to speak in class or before the student body. Once again the range of diversity is dictated by the size and makeup of your community. Encourage class members—perhaps through a brainstorming session—to think of people that they know who represent certain ethnic groups. Many ethnic groups have social or political organizations with officials who would likely be happy to speak to an audience such as you could provide. As is the case with the speakers from the religious groups, ethnic speakers should talk about the history of intolerance toward their groups and what can be done to improve tolerance among people of different ethnic backgrounds.

***Political Diversity.*** People and groups with differing political views are likely present in your community. Have a committee of students invite representatives from these groups to participate in a panel discussion about the history and philosophy of their parties. Ask your students to prepare questions for the panel participants ahead of time. Those questions should then be asked by a moderator who will keep the discussion flowing and orderly. Besides the obvious Democratic and Republican Parties, you may find people with other political persuasions. Perhaps your community has an active Libertarian or other third party organization. Consider inviting someone who worked for Ross Perot's 1992 presidential campaign. There may be other political groups unique to your community.

**TOLERANCE IN THE WORLD COMMUNITY.** Begin by telling your students that the United Nations has declared 1995 its "Year for Tolerance." In addition, the United Nations has developed a declaration stating why tolerance is important to world peace.

Then, distribute to each student two copies of **Student Handout 22—The United Nations Declaration on Tolerance.** The handout contains portions of five paragraphs from the declaration. On one copy, each class member should respond to the questions that follow each statement.

Class members should then ask someone in their families or neighborhoods, or a friend to respond to the same questions, using the second copy of the handout. Urge them to ask someone that they know will cooperate. It would be interesting if they could ask a non-American or a new immigrant for their ideas.

After everyone has completed the handout assignment, proceed through each item and ask students for their reactions. Encourage students with differing views to challenge one another. Do they now have a broader appreciation of tolerance than they did before they read the book and completed the activities?

Then turn to the responses from the community. Are there contrasts between class members and non-class members? If there are, ask students why this may have happened. Ask students to relate any discussions or debates that this exercise may have stimulated between them and their respondents. Do they think that the world may be more peaceful if everyone had a similar lesson about tolerance? Conclude by turning back to Rodney King's quote at the beginning of the book. Can we all get along?

# STUDENT HANDOUT 1

## Ranking Rights and Freedoms

**Below is a list of sixteen freedoms and rights guaranteed by the Bill of Rights. Choose ten of the items on this list that are most important to you and that you absolutely would not be willing to give up. Keep in mind, however, that the items you leave off your list will no longer be guaranteed to you. After you have selected your "top ten," answer the questions that follow.**

_____ 1. freedom of religion
_____ 2. freedom of speech
_____ 3. freedom of press
_____ 4. freedom of assembly
_____ 5. freedom of petition
_____ 6. right to keep and bear arms
_____ 7. security against unreasonable searches and seizures
_____ 8. probable cause necessary for issuance of a search warrant
_____ 9. indictment by a grand jury necessary before being made to answer for a capital crime
_____ 10. cannot be tried twice for the same crime (double jeopardy)
_____ 11. cannot be made to testify against yourself
_____ 12. cannot be deprived of life, liberty, and property without due process of law
_____ 13. must be compensated for private property taken for public use
_____ 14. right to a fair and speedy jury trial
_____ 15. cannot be held in jail by excessive bail
_____ 16. cannot be subjected to cruel and unusual punishment

Write a brief answer to each of the following questions. Use the back of this handout if you need more space.

1. Which one of your top ten is most important to you? Why?

2. Which one of your top ten is least important to you? Why?

3. Which one of the six not on your list was most difficult to give up? Why?

4. Which one of the six not on your list was easiest to give up? Why?

5. Write a paragraph discussing the process you used and the difficulties you had in arriving at your top ten list. Tell how you ultimately made the tough choices as you were deciding the last few items on your list.


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# STUDENT HANDOUT 2

## Personal Survey

**Answer the following questions as completely as you can. You will be invited to share your responses with the rest of the class, but you will not be required to do so. Part I of this handout should help you identify your tolerance of others' opinions. Part II should help you recognize a time when your beliefs or actions were not tolerated. Use the back of this page if you need more space.**

### PART I

1. What are some beliefs of which it is hard for you to be tolerant?

2. Describe a situation in which you behaved intolerantly. What were the consequences to the person or group of which you were intolerant?

3. Which rights did you violate or deny to those of whom you were intolerant?

4. What motivated your action of intolerance?

5. How were you affected by the situation? At the time, how did you feel about what you did? How do you feel about the incident now?

### PART II

1. Describe an episode when someone was not tolerant of you because of something you believed.

2. Why do you think they acted as they did?

3. What was your response to their intolerance? How did the experience make you feel?

4. Did this episode make you more or less tolerant toward others? Why?

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# STUDENT HANDOUT 3

## Recognizing Tolerance

**Read each statement and discuss with other members of your group whether the statement is an example of tolerance or intolerance. While discussing each item, remember the definition of tolerance that the class formulated and that is now written on the board. Rather than spending lots of time trying to arrive at a unanimous decision, let the majority rule for now; you only have ten minutes. Those who disagreed with the majority will have a chance to tell why.**

1. a. A television reporter discusses hate crimes in an interview with representatives from the Jewish Anti-Defamation League and from a pro-Nazi group.

   b. A local newspaper refuses to publish a letter to the editor that criticizes the paper's reporting on hate crimes.

2. a. A city official refuses to grant the Ku Klux Klan (KKK) a parade permit because the official, an African American, hates the KKK.

   b. The city official gives the KKK a parade permit, but she also helps organize a rally for anti-Klan supporters.

3. a. A group of students at your high school is offended by certain t-shirts that they believe contain vulgar messages. The offended students use magic markers to deface the t-shirts being worn by the students who offend them.

   b. The offended students write letters to the editor of the school newspaper urging students to not wear clothing with vulgar messages.

4. a. Casey tells her teacher that she will miss a day of school, and consequently a test, because the day falls on an important religious holiday observed by her family. Casey's teacher allows her to make up the test after school and does not count her absent on that day.

   b. Casey tells her teacher that she must miss an important test because it falls on a day that she will be absent due to religious observances. Casey's teacher tells her that she will have to take a harder make-up test because missing school for a religious holiday is not allowed.

5. a. Members of an animal rights group wait outside a plush hotel where a party is being held. Many party-goers are wearing fur coats as they leave. The animal rights activists throw cans of red paint on the party-goers, telling them that wearing the skins of dead animals is cruel and wrong.

   b. Dawn tells April that she respects April's right to choose a fur coat, but that she disagrees with the decision. Dawn gives April some literature on animal rights.


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# STUDENT HANDOUT 4

## Tolerance and the First Amendment

**Review the following questions before you read "Tolerance and The First Amendment" in *The First Amendment: America's Blueprint for Tolerance.* After you have finished reading the chapter, answer the questions. They should provide you with helpful background as you study the First Amendment.**

1. Why did many of the early colonists leave England for America?

2. What was ironic about the actions of some of these early colonists toward others with different beliefs once they moved to America?

3. What was the Articles of Confederation? Why was it abandoned?

4. How did the Bill of Rights come into being? What is the main purpose of the Bill of Rights?

5. What is the process known as incorporation? How did incorporation expand the scope of the Bill of Rights?

6. What is the principle known as "state action"? How does state action limit the scope of the Bill of Rights?

7. Discuss in four or five sentences why, concerning rights of minorities and women, the First Amendment did not protect equality among the American people.

8. In your own words, discuss how you think the First Amendment can promote tolerance.

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# STUDENT HANDOUT 5

## From Toleration to Freedom

**President George Washington visited Newport, Rhode Island, in 1790. There he was presented with an address by the Hebrew Congregation of Newport, who had built the Touro Synagogue. Washington's reply emphasized that freedom of religious belief, not mere toleration, was the standard of the new nation.**

*To the President of the United States of America*

Sir.

Permit the children of the Stock of Abraham to approach you with the most cordial affection and esteem for your person and merits, and to join with our fellow citizens in welcoming you to Newport. . . .

Deprived as we heretofore have been of the invaluable rights of free citizens, we now . . . behold a Government, erected by the Majesty of the People—a Government, which to bigotry gives no sanction, to persecution no assistance—but generously affording to All liberty of conscience, and immunities of Citizenship—deeming every one, of whatever Nation, tongue, or language equal parts of the great governmental machine. . . .

—*Moses Seixas, Warden*

*To the Hebrew Congregation in Newport, Rhode Island*

Gentlemen.

. . . The Citizens of the United States of America have a right to applaud themselves for having given to mankind examples of an enlarged and liberal policy: a policy worthy of imitation. All possess alike liberty of conscience and immunities of citizenship. It is now no more that toleration is spoken of, as if it was by the indulgence of one class of people, that another enjoyed the exercise of their natural rights. For happily the Government of the United States, which gives to bigotry no sanction, to persecution no assistance, requires only that they who live under its protection should demean themselves as good citizens, in giving it on all occasions their effectual support.

. . . May the Children of the Stock of Abraham, who dwell in this land, continue to merit and enjoy the good will of the other Inhabitants; while every one shall sit in safety under his own vine and fig tree, and there shall be none to make him afraid. . . .

—*G. Washington*



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# STUDENT HANDOUT 6

## Case Study: *Wallace v. Jaffree* (1985)

**Ishmael Jaffree challenged Alabama's "moment of silence" law. The Supreme Court overturned the law, because that state's legislative history indicated that Alabama intended "to characterize prayer as a favored practice." The justices differed as to whether the Establishment Clause applies to believers and nonbelievers alike.**

JUSTICE STEVENS delivered the opinion of the Court.

> As is plain from its text, the First Amendment was adopted to curtail the power of Congress to interfere with the individual's freedom to believe, to worship, and to express himself in accordance with the dictates of his own conscience. . . .
>
> . . . At one time it was thought that this right merely proscribed the preference of one Christian sect over another, but would not require equal respect for the conscience of the infidel, the atheist, or the adherent of a non-Christian faith such as [Islam] or Judaism. But . . . the Court has unambiguously concluded that the individual freedom of conscience protected by the First Amendment embraces the right to select any religious faith or none at all. This conclusion derives support not only from the interest in respecting the individual's freedom of conscience, but also from the conviction that religious beliefs worthy of respect are the product of free and voluntary choice by the faithful, and from recognition of the fact that the political interest in [stopping] intolerance extends beyond intolerance only of Christian sects—or even intolerance among "religions"—to encompass intolerance of the disbeliever and the uncertain. . . .

JUSTICE REHNQUIST, dissenting.

> The true meaning of the Establishment Clause can only be seen in its history. . . . As drafters of our Bill of Rights, the framers inscribed the principles that control today. Any deviation from their intentions frustrates the permanence of that charter and will only lead to the type of unprincipled decisionmaking that has plagued our Establishment Clause cases since *Everson*. . . .
>
> The Court strikes down the Alabama statute . . . because the state wished to "endorse prayer as a favored practice." . . . It would come as much of a shock to those who drafted the Bill of Rights as it will to a large number of thoughtful Americans today to learn that the Constitution, as construed by the majority, prohibits the Alabama legislature from "endorsing prayer." George Washington himself, at the request of the very Congress which passed the Bill of Rights, proclaimed a day of "public thanksgiving and prayer, to be observed by acknowledging with grateful hearts the many and signal favors of Almighty God." History must judge whether it was the father of his country in 1789, or a majority of the Court today, which has strayed from the meaning of the Establishment Clause.

Using the information in the case you have just read, answer the following questions.

1. What did Justice Stevens say the Court has "unambiguously concluded"?

2. Where does Justice Stevens say that "religious beliefs worthy of respect" come from?

3. Did the Court believe that the Alabama law was intolerant of people who do not believe in religion or are uncertain about religious beliefs?

4. What did Chief Justice Rehnquist say was the Court's reason for striking down the Alabama statute? Did Rehnquist agree with that reason?

5. How does Rehnquist think that even President George Washington endorsed prayer? Does Rehnquist think that Washington violated the Establishment Clause by his action?

6. How did the Court rule in this case? Do you agree with the Court's decision? Why or why not?

7. Speculate why there is so much controversy about prayer in public schools today.



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# STUDENT HANDOUT 7

## Case Study: *Kiryas Joel School District v. Grumet* (1994)

**The state of New York created a special school district to benefit the disabled children in the village of Kiryas Joel—a community of very conservative Jews, the Satmar Hasidim. The Supreme Court ruled that such action violated "a principle at the heart of the Establishment Clause, that government should not prefer one religion to another, or religion to irreligion."**

JUSTICE SOUTER delivered the opinion of the Court.

> The residents of Kiryas Joel are a vigorously religious people who make few concessions to the modern world and go to great lengths to avoid assimilation into it. They interpret the Torah strictly; segregate the sexes outside the home; speak Yiddish as their primary language; [avoid] television, radio, and English-language publications; and dress in distinctive ways that include headcoverings and special garments for boys and modest dresses for girls. Children are educated in private religious schools. . . .
>
> These schools do not, however, offer any distinctive services to handicapped children, who are entitled under state and federal law to special education services even when enrolled in private schools. . . . Children from Kiryas Joel who needed special education (including the deaf, the mentally retarded, and others suffering from a range of physical, mental, or emotional disorders) were then forced to attend public schools outside the village, which their families found highly unsatisfactory. . . .
>
> [In 1989] the New York legislature passed the statute at issue in this litigation, which provided that the Village of Kiryas Joel "is constituted a separate school district." . . .
>
> The general principle [is] that civil power must be exercised in a manner neutral to religion. . . . Here the benefit flows only to a single sect, . . . and we are forced to conclude that the state of New York has violated the Establishment Clause.
>
> In finding that [the law] violates the requirement of government neutrality . . . , we do not deny that the Constitution allows the state to accommodate religious needs by alleviating special burdens. . . .
>
> But accommodation is not a principle without limits. . . .
>
> In this case we are clearly [forced] to conclude that the statute before us fails the test of neutrality. It delegates a power this Court has said "ranks at the very apex of the function of a state," to an electorate defined by common religious belief and practice, in a manner that fails to foreclose religious favoritism. It therefore crosses the line from permissible accommodation to impermissible establishment. . . .

JUSTICE SCALIA, dissenting. . . .

> The Court today finds that the Powers That Be, up in Albany, have conspired to effect an establishment of the Satmar Hasidim. I do not know who would be more surprised at this discovery: the founders of our nation or Grand Rebbe Joel Teitelbaum, founder of the Satmar. . . .
>
> I, however, am not surprised. Once this Court has abandoned text and history as guides, nothing prevents it from calling religious toleration the establishment of religion. . . .
>
> The Court's decision today is astounding. [The law] involves no public aid to private schools and does not mention religion. [T]he Court . . . invalidates the present accommodation because it does not trust New York to be as accommodating toward other religions . . . in the future. This is unprecedented except that it continues, and takes to new extremes, a recent tendency in the opinions of this Court to turn the Establishment Clause into a repealer of our nation's tradition of religious toleration. I dissent.

Using the information in the case you have just read, answer the following questions.

1. What does Justice Souter say the "general principle" is regarding civil power (the power of the state)?

2. What is the power that Justice Souter says "ranks at the very apex of the function of a state"?

3. Why does Justice Souter believe that the New York law violates the Establishment Clause?

4. Why does Justice Scalia believe the New York law does not violate the Establishment Clause?

5. How did the Court rule in this case? Do you agree with the Court's decision? Why or why not?

6. In your opinion, when does the government, by showing tolerance for (or accommodating) a religious group, instead give it special privileges—thus being intolerant toward other groups?



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# STUDENT HANDOUT 8

## You Be the Judge

**You are the judge in each of the following cases. After you read each scenario, spend a few minutes weighing the information you have just read and then write your decision and tell why you decided as you did.**

1. Devout Christian Scientist parents refuse to bring their sick 5-year-old child to a medical clinic, even though the illness could be cured by proven treatment and medication. The child dies, and the couple is arrested and brought to trial on charges of murder. The prosecutor tells you that the couple is guilty because they did not provide the child with proper treatment, even though they knew that the child's illness could probably be successfully treated. The parents are grief-stricken, but argue that as Christian Scientists they believed spiritual healing would restore their child's health. They said it was contrary to their religious beliefs to bring the child to a medical clinic, and that to find them guilty would be denying them their right to freedom of religion under the First Amendment. What would you decide?

2. Your state has a law requiring public school students to stand and pledge allegiance to the flag at the beginning of each school day. When the children of a devout Jehovah's Witnesses family refuse to salute the flag, they are suspended from school. The parents of the suspended children sue the school board. They argue that under their religion, saluting the flag is idolatry and therefore a sin. They are not unpatriotic, but merely want an exception to be made for their children. The school board says that the children should not be allowed back in school until they decide they can salute the flag. The school board argues that saluting the flag merely shows loyalty to America, and that it is required by state law; religious beliefs are not relevant. What would you decide?

3. A male member of the Mormon church (Latter Day Saints) living in Utah is prosecuted by federal authorities in the late 1800s for bigamy (having more than one spouse). The man states that this practice is upheld by the doctrines of his church. The federal prosecutor says that bigamy destoys the social order in America and must be punished. What would you decide?

4. An Amish man is fined for violating a state law that requires his children to go to school beyond the eighth grade. As part of their religion, the Amish believe in separating themselves from the modern world. Therefore, they do not want their children to receive more education than their simple lifestyle demands. The state argues that education is an important part of citizenship and that the children should not grow up to be "ignorant." What would you decide?

5. An American Indian is arrested for using an illegal drug—peyote—in a religious ceremony. He is charged with violating his state's drug laws. The prosecutor claims that the people of the state do not want illegal and dangerous drugs to be used there—and that's why the laws were passed. The man who was arrested argues that peyote is and always has been a part of his religion, and that convicting him would violate his freedom of religion. What would you decide?

6. An Air Force captain, who is Jewish, is disciplined for wearing nonmilitary apparel (a skullcap called a yarmulke) with his uniform. The captain states that the skullcap does not interfere with his duties or pose a safety hazard; therefore, he should be allowed to practice his religion freely. The military says that uniforms have to be consistent to uphold military discipline; if the military makes an exception for one religion, it would have to make exceptions for others. What would you decide?


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# STUDENT HANDOUT 9

## Case Study: *Wisconsin v. Yoder* (1972)

**Wisconsin's compulsory education law required that all children attend public or private school until age 16. The Supreme Court held that this law violated the Free Exercise Clause when applied to members of the Amish faith.**

CHIEF JUSTICE BURGER delivered the opinion of the Court.

Respondents Jonas Yoder and Adin Yutzy are members of the Old Order Amish Religion, and respondent Wallace Miller is a member of the Conservative Amish Mennonite Church. They and their families are residents of Green County, Wisconsin. Wisconsin's compulsory school attendance law required them to cause their children to attend public or private school until reaching age 16 but the respondents declined to send their children, ages 14 and 15, to public school after completing the eighth grade. The children were not enrolled in any private school, or within any recognized exception to the compulsory attendance law, and they are conceded to be subject to the Wisconsin statute.

. . . The trial testimony showed that respondents believed, in accordance with the tenets of Old Order Amish communities generally, that their children's attendance at high school, public or private, was contrary to the Amish religion and way of life. They believed that by sending their children to high school, they would not only expose themselves to the danger of the censure of the church community, but . . . endanger their own salvation and that of their children. . . .

Amish . . . object to the high school and higher education generally because the values it teaches are in marked variance with Amish values and the Amish way of life; they view secondary school education as an impermissible exposure of their children to a "worldly" influence in conflict with their beliefs. The high school tends to emphasize intellectual and scientific accomplishments, self-distinction, competitiveness, worldly success, and social life with other students. Amish society emphasizes informal learning-through-doing, a life of "goodness" rather than a life of intellect, wisdom rather than technical knowledge, community welfare rather than competition, and separation rather than integration with contemporary worldly society. . . .

The Amish do not object to elementary education through the first eight grades as a general proposition because they agree that their children must have basic skills in the "three R's" in order to read the Bible, to be good farmers and citizens, and to be able to deal with non-Amish people when necessary in the course of daily affairs. . . .

The state advances two primary arguments in support of its system of compulsory education. It notes, as Thomas Jefferson pointed out early in our history, that some degree of education is necessary to prepare citizens to par-

ticipate effectively and intelligently in our open political system if we are to preserve freedom and independence. Further, education prepares individuals to be self-reliant and self-sufficient participants in society. We accept these propositions.

However, the evidence [presented] by the Amish in this case is persuasively to the effect that an additional one or two years of formal high school for Amish children in place of their long-established program of informal vocational education would do little to serve those interests. . . . It is one thing to say that compulsory education for a year or two beyond the eighth grade may be necessary when its goal is the preparation of the child for life in modern society as the majority live, but it is quite another if the goal of education be viewed as the preparation of the child for life in the separated agrarian community that is the keystone of Amish faith. . . .

The State attacks respondents' position as one fostering "ignorance" from which the child must be protected by the State. No one can question the state's duty to protect children from ignorance, but this argument does not square with the facts. . . . Whatever their idiosyncracies as seen by the majority, this record strongly shows that the Amish community has been a highly successful social unit within our society even if apart from the conventional "mainstream." Its members are productive and very law-abiding members of society; they reject public welfare in any of its usual modern forms. . . .

There can be no assumption that today's majority is "right" and the Amish and others like them are "wrong." A way of life that is odd or even erratic but interferes with no rights or interests of others is not to be condemned because it is different.

Using the information in the case you have just read, answer the following questions.

1. Why did Jonas Yoder refuse to send his children to the public high school?

2. What Amish beliefs did not allow Yoder to send his children to high school?

3. Why did he send them to school through the eighth grade, but no further?

4. What did the state contend in its case against Yoder?

5. What was the Court's decision about this case and the Free Exercise Clause?

6. What did Chief Justice Burger mean when he said, "A way of life . . . is not to be condemned because it is different"?

7. Do you agree with the Court's decision? Why or why not?

8. What would you have done if you had been in Yoder's shoes?

9. What would you have done if you had been one of Yoder's high-school-aged children?

10. Justice William Douglas dissented in this case, saying that the Amish children should be asked about *their* religious beliefs and whether *they* wanted to stay in school. Do you agree?

11. How is this case related to tolerance? Was the state of Wisconsin tolerant of Jonas Yoder and his family? Was Yoder tolerant of his children?

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# STUDENT HANDOUT 10

## *Kirpan:* Weapon or Symbol?

Khalsa Sikhs, whose faith originated in India, wear five religious symbols to show their devotion. One of these symbols—a curved, dull-edged dagger called a *kirpan*—represents the Sikhs' duty to defend the oppressed, following a 500-year tradition. Sikhs are given the *kirpan* when baptized, and it hangs around the neck in a sheath and under clothing. Sikhs are prohibited from removing the dagger from its sheath or using it to hurt another person.

But in Livingston, California, school officials fear that the *kirpan* can be used as a weapon and have barred Sikh students from wearing it. They argue that the *kirpan* is as sharp as a dull knife and violates the school's weapons policy. But other California school districts allow Sikh students to wear *kirpans* to school as long as they stay inside students' clothing and the sheaths are sewn so that the *kirpans* cannot be removed.

The Sikh students in Livingston sued to have the school policy changed, citing the fact that no reported violence in the United States has involved *kirpans*. A federal appeals court ruled in favor of the students.

Using the information you have just read, defend the position of either the school board or the students in a two- to three-paragraph essay. Provide examples that support your argument. You may be asked to volunteer your responses in class.



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# STUDENT HANDOUT 11

## Wrapping Up

**Read the following questions and respond to them in your own words. Give reasons for your opinions.**

1. What might be some common problems in protecting religious freedom? Explain how you think American men and women should deal with these problems.

2. What are the advantages and disadvantages of religious diversity in society?

3. What criteria should the courts consider when the religious practices of a group conflict with the laws of society?

4. Do you think issues involving religious freedom should be decided in the courts or by politicians? Why?

5. In what ways can individuals take responsibility for ensuring that everyone's religious freedom is protected?

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# STUDENT HANDOUT 12

## Is It "Speech"?

**Read the following scenarios. Decide whether each would be protected as freedom of speech, and write *yes* or *no* in the blank. Jot down a brief explanation for your answer.**

Does freedom of speech give a person the right to:

_____ 1. Falsely shout "fire" in a crowded movie theater?

_____ 2. Debate the value of nuclear arms with another citizen?

_____ 3. Sing the national anthem in a screeching manner at a major league baseball game?

_____ 4. Wear political symbols to school, such as a button that says "Down with America"?

_____ 5. Demonstrate peacefully in front of the White House to protest the president's plan to send troops to a foreign country?

_____ 6. Use sexually suggestive, but not obscene, language in a campaign speech for high school student council?

_____ 7. Verbally abuse another individual directly?

_____ 8. Not participate in reciting the Pledge of Allegiance?

_____ 9. Damage another person's reputation by spreading false rumors?

_____ 10. Promote illegal action, such as revolution, as an abstract idea?

_____ 11. Stage a march by the Ku Klux Klan?

_____ 12. Burn the American flag?



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# STUDENT HANDOUT 13

## Case Study: *Texas v. Johnson* (1989)

**Read the following viewpoints from the Supreme Court case, *Texas v. Johnson*. Which opinion do you think has the stronger arguments? Why?**

### Opinion A

. . . For more than 200 years, the American flag has occupied a unique position as the symbol of our nation, a uniqueness that justifies a governmental prohibition against flag burning in the way . . . Johnson did here. . . .

The American flag, . . . throughout more than 200 years of our history, has come to be the visible symbol embodying our nation. It does not represent the views of any particular political party, and it does not represent any particular political philosophy. The flag is not simply another "idea" or "point of view" competing for recognition in the marketplace of ideas. Millions and millions of Americans regard it with an almost mythical reverence regardless of what sort of social, political, or philosophical beliefs they may have. I cannot agree that the First Amendment invalidates the act of Congress, and the laws of forty-eight of the fifty states, which make criminal the public burning of the flag. . . .

. . . The Texas statute deprived Johnson of only one rather inarticulate symbolic form of protest—a form of protest that was profoundly offensive to many—and left him with a full [range] of other symbols and every conceivable form of verbal expression to express his deep disapproval of national policy. Thus, in no way can it be said that Texas is punishing him because his hearers—or any other group of people—were profoundly opposed to the message that he sought to convey. Such opposition is no proper basis for restricting speech or expression under the First Amendment. It was Johnson's use of this particular symbol, and not the idea that he sought to convey by it . . . for which he was punished. . . .

. . . [The lower court decided] that the American flag is just another symbol, about which not only must opinions pro and con be tolerated, but for which the most minimal public respect may not be [required]. The government may [draft] men into the armed forces where they must fight and perhaps die for the flag, but the government may not prohibit the public burning of the banner under which they fight. I would uphold the Texas statute as applied in this case.

### Opinion B

The First Amendment literally forbids the abridgment only of "speech," but we have long recognized that its protection does not end at the spoken or written word. . . .

It remains to consider whether the state's interest in preserving the flag as a symbol of nationhood and national unity justifies Johnson's conviction. . . .

If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable. . . .

We have not recognized an exception to this principle even where our flag has been involved. . . .

. . . To conclude that the government may permit designated symbols to be used to communicate only a limited set of messages would be to enter territory having no discernible or defensible boundaries. Could the government, on this theory, prohibit the burning of state flags? Of copies of the presidential seal? Of the Constitution? In evaluating these choices under the First Amendment, how would we decide which symbols were sufficiently special to warrant this unique status? To do so, we would be forced to consult our own political preferences, and impose them on the citizenry, in the very way that the First Amendment forbids us to do. . . .

There is, moreover, no indication—either in the text of the Constitution or in our cases interpreting it—that a separate . . . category exists for the American flag alone. Indeed, we would not be surprised to learn that the persons who framed our Constitution and wrote the [First] Amendment were not known for their reverence for the Union Jack [England's flag]. The First Amendment does not guarantee that other concepts virtually sacred to our nation as a whole—such as the principle that discrimination on the basis of race is odious and destructive—will go unquestioned in the marketplace of ideas. . . .

We are tempted to say, in fact, that the flag's deservedly cherished place in our community will be strengthened, not weakened, by our holding today. Our decision is a reaffirmation of the principles of freedom and inclusiveness that the flag best reflects, and of the conviction that our toleration of criticism such as Johnson's is a sign and source of our strength. . . .

The way to preserve the flag's special role is not to punish those who feel differently. . . . It is to persuade them that they are wrong. . . . We can imagine no more appropriate response to burning a flag than waving one's own, no better way to counter a flag-burner's message than by saluting the flag that burns, no surer means of preserving the dignity even of the flag that burned than by—as one witness here did—according its remains a respectful burial. We do not consecrate the flag by punishing its desecration, for in doing so we dilute the freedom that this cherished emblem represents. . . .


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# STUDENT HANDOUT 14

## Can You Say Anything You Want?

### PART I

**The Supreme Court has ruled that freedom of speech has limits. The First Amendment does not allow us to say whatever we feel like saying. Read each of the following statements and indicate with a T or F whether or not you think the statement is true or false.**

_____ 1. Obscene speech is not protected by the First Amendment.

_____ 2. Local communities have a great deal of authority in outlawing obscenity.

_____ 3. The First Amendment does not protect someone who knowingly spreads false information and damages another person's reputation.

_____ 4. The First Amendment does not protect abusive or insulting language directed toward a specific individual, known as "fighting words."

_____ 5. Cross-burning is expressive conduct that cannot be regulated purely on the basis of its content.

_____ 6. Freedom of speech can be restricted in military bases, prisons, and schools when the expression interferes with the purpose of the facility.

### PART II

**After reading the section entitled "Limits on Free Speech" in *The First Amendment: America's Blueprint for Tolerance*, answer the following questions.**

1. What did the Supreme Court do in the case of *Miller v. California* (1973) to determine if something was obscene?

2. How would courts decide whether certain speech is defamation?

3. In the case of *Chaplinsky v. New Hampshire* (1942), what did the Court say was the reason that "fighting words" were not protected by the First Amendment?

4. Why do some critics charge that codes prohibiting "hate speech" violate freedom of speech?

5. Why did the Court side with R.A.V. in the case of *R.A.V. v. St. Paul* (1992)?

6. In the case of *Wisconsin v. Mitchell* (1993), why did the Court uphold a Wisconsin law that increased penalties for crimes committed because of the victim's race, religion, sexual orientation, and so forth?

7. Did the Court recognize Mary Beth and John Tinker's right to use symbolic speech in the case of *Tinker v. Des Moines School District* (1969)? According to the Court, what would students have to do for their speech to be limited?

8. In the case of *Bethel School District v. Fraser* (1986), why did the Supreme Court uphold the suspension of high school student Matthew Fraser, even though an adult in a similar setting could have done what Fraser did?


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# STUDENT HANDOUT 15

## Tolerance and Responsibility

**Read the following situations and, as a group, answer the questions as thoroughly as possible. Use the back of this page if you need more space. After every group has finished, the class will share responses.**

**Situation 1**
Some students from the senior class are angry that several class privileges have been taken away by the high school principal, Ms. Harrell. One lost privilege is "open lunch," when seniors could leave the school grounds at noon. Ms. Harrell opted for a "closed lunch" this school year, because some students skipped afternoon classes and others were involved in several car accidents while rushing back to school. One group of seniors peacefully protested the new policy by demonstrating in front of the principal's office every day at lunchtime for a week. Another group vandalized the school cafeteria and wrote graffiti on the walls.

- Which group of students exercised freedom of speech responsibly?
- Which group do you think was more likely to convince Ms. Harrell to change the rule? Why?
- What are some other ways students could have responsibly exercised their freedom of expression on this issue? Explain your answer.

**Situation 2**
The student chapter of the National Association for the Advancement of Colored People (NAACP) at a local state-supported university has invited a controversial African-American leader to speak at an open meeting. One group of students pickets outside the meeting to protest the speaker's alleged racist comments in the past. Another group attends the meeting and shouts down the speaker so that he must cancel his speech.

- Which group of students exercised freedom of speech responsibly?
- Which group do you think was more likely to convince other people that the speaker was racist? Why?
- What are some other ways students could have responsibly exercised their freedom of expression on this issue? Explain your answer.

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# STUDENT HANDOUT 16

## The College Campus: Friend or Foe of Free Speech?

**Your group is a faculty committee at a state university. The university president has asked you to draft a new hate speech code that could be held constitutional. Consider the following scenario and then write a report from your group to the university president outlining your recommendations.**

In *R.A.V. v. St. Paul* (1992), the Supreme Court unanimously struck down a St. Paul, Minnesota, law prohibiting hate speech because the law punished speech based on its content. Five justices said that hate speech laws in general were unconstitutional. However, four justices said that they might uphold a law banning hate speech as "fighting words" if the law was very narrowly drawn so that it did not include protected speech. (Note: "Fighting words" must be speech directed at a specific individual, not just offensive language in general.)

Assume that a new justice has been confirmed for the Supreme Court to replace one of the original five who voted to strike down the St. Paul law in the *R.A.V.* decision. This new justice has written many law review articles in favor of hate speech codes. What will you propose to the president?



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# STUDENT HANDOUT 17

## Case Study: *Hazelwood School District v. Kuhlmeier* (1988)

**Cathy Kuhlmeier and other students on a high school newspaper staff sued the Hazelwood school district in 1983. The students charged that, by deleting two pages of the school newspaper, the principal had violated their First Amendment rights, as guaranteed in *Tinker v. Des Moines* (1969).**

**But the Supreme Court distinguished the *Tinker* case, in which students were punished for wearing political symbols, from the *Hazelwood* case, in which the school sponsored the student expression. The Court said that educators have the right to edit school-sponsored student speech as long as their actions are "reasonably related to legitimate pedagogical concerns."**

JUSTICE WHITE delivered the opinion of the Court.

> This case concerns the extent to which educators may exercise editorial control over the contents of a high school newspaper produced as part of the school's journalism curriculum. . . .
>
> The question whether the First Amendment requires a school to tolerate particular student speech—the question that we addressed in *Tinker*—is different from the question whether the First Amendment requires a school affirmatively to promote particular student speech. The former question addresses educators' ability to silence a student's personal expression that happens to occur on the school premises. The latter question concerns educators' authority over school-sponsored publications, theatrical productions, and other expressive activities that students, parents, and members of the public might reasonably perceive to bear the imprimatur [seal of approval] of the school. These activities may fairly be characterized as part of the school curriculum, whether or not they occur in a traditional classroom setting, so long as they are supervised by faculty members and designed to impart particular knowledge or skills to student participants and audiences.
>
> Educators are entitled to exercise greater control over this second form of student expression to assure that participants learn whatever lessons the activity is designed to teach, that readers or listeners are not exposed to material that may be inappropriate for their level of maturity, and that the views of the individual speaker are not erroneously attributed to the school. . . .
>
> Accordingly, we conclude that the standard articulated in *Tinker* for determining when a school may punish student expression need not also be the standard for determining when a school may refuse to lend its name and resources to the dissemination of student expression. Instead, we hold that educators do not offend the First Amendment by exercising control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns. . . .

JUSTICE BRENNAN, dissenting. . . .

Free student expression undoubtedly sometimes interferes with the effectiveness of the school's pedagogical functions. . . . [Justice Brennan here argues that almost any type of student speech can arguably interfere with the school's educational mission on some level.]

If mere incompatibility with the school's pedagogical message were a constitutionally sufficient justification for the suppression of student speech, school officials could . . . [turn] our public schools into "enclaves of totalitarianism" that "strangle the free mind at its source." The First Amendment permits no such blanket censorship authority. . . .

In *Tinker*, this Court struck the balance. We held that official censorship of student expression—there the suspension of several students until they removed armbands protesting the Vietnam War—is unconstitutional unless the speech "materially disrupts classwork or involves substantial disorder or invasion of the rights of others." . . .

The Court today casts no doubt on *Tinker's* vitality. Instead it erects a [classification] of school censorship, concluding that *Tinker* applies to one category and not another. . . .

I would reject the Court's rationale for abandoning *Tinker* in this case. The Court offers no more than an obscure tangle of three excuses to afford educators "greater control" over school-sponsored speech than the *Tinker* test would permit: the public educator's prerogative to control curriculum; the pedagogical interest in shielding the high school audience from objectionable viewpoints and sensitive topics; and the school's need to dissociate itself from student expression. None of the excuses, once disentangled, supports the distinction that the Court draws. *Tinker* fully addresses the first concern; the second is illegitimate; and the third is readily achievable through less oppressive means. . . .

Finally, even if the majority were correct that the principal could constitutionally have censored the objectionable material, I would emphatically object to the brutal manner in which he did so. . . . He objected to some material in two articles, but [cut] six entire articles. He did not so much as inquire into obvious alternatives, such as precise deletions or additions . . . , rearranging the layout, or delaying publication. Such unthinking contempt for individual rights is intolerable from any state official. It is particularly [dangerous] from one to whom the public entrusts the task of inculcating in its youth an appreciation for the cherished democratic liberties that our Constitution guarantees.

The Court opens its analysis in this case by purporting to reaffirm *Tinker's* time-tested proposition that public school students "do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." That is an ironic introduction to an opinion that denudes high school students of much of the First Amendment protection that *Tinker* itself prescribed. . . . The young men and women of Hazelwood E. . . expected a civics lesson, but not the one the Court teaches them today.

Using the information in the case you have just read, answer the following questions:

1. How does the Court think this case differs from *Tinker*? Do you agree?

2. For what three reasons does the Court think that school officials are entitled to exercise greater control over school-sponsored student speech?

3. What condition must school officials meet if they are restricting student speech in a school-sponsored activity?

4. Why does Justice Brennan disagree with the Court's decision?

5. Why does Justice Brennan believe it is particularly dangerous when a school official restricts student speech?

6. Is there a difference between editing and censoring? Why or why not?

7. What is the principal's duty to protect the free speech rights of students? Does this conflict with the principal's duty to uphold the educational standards of the community?

8. Should school officials be tolerant of student speech they do not like? Are there limits to such tolerance?

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# STUDENT HANDOUT 18

## Kathryn's Graduation Speech

### PART I

**Read the standards for student graduation speakers listed below, which are based on those issued by Kathryn Sinclair's high school, then answer the questions that follow.**

A. Write a verbatim draft of your speech and submit it for approval.
- check for correct form (punctuation, grammar, etc.)
- check for clear, well-organized content

B. Follow these general guidelines for appropriate material:
- keep it *positive* (this is a celebration—not the time for negatives, criticisms, complaints)
- do not focus on one group (you represent the entire class)
- keep it general (you represent the entire school and if you "name names," someone gets left out)

C. Practice! Practice! Practice!
- time yourself to stay within your time limits
- enunciate clearly and speak slowly and loudly
- make eye contact with the audience; do not read verbatim

D. Smile! Be happy! Enjoy yourself!

1. Are these standards permissible under the Supreme Court's ruling in *Hazelwood School District v. Kuhlmeier*? Why or why not?

2. Which standards are most likely to be upheld under *Hazelwood*? Why?

3. Which standards are least likely to be upheld under *Hazelwood*? Why?

## PART II

**Read the excerpt from Kathryn Sinclair's graduation speech below and then answer the questions that follow.**

The First Amendment of the Constitution of the United States of America states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

The country song by Aaron Tippin entitled "You've Got to Stand for Something" says: "You've got to stand for something or you'll fall for anything. You've got to be your own man, not a puppet on a string." In my past four years at Riverdale High School, I have listened to this song and been inspired. I have been inspired to think freely and defend what I believe is right. The real world requires us to think and feel for ourselves because, realistically, there will not be anyone there to do it for us. We accomplish nothing by conformity if there are not first individuals willing to lead the crowd. However, individuality is not determined by the ability to lead groups but by the self-satisfaction that you are doing what is right even if you are the only one who thinks so. . . .

My challenge to you, the 1994 graduating class of Riverdale High School, is not to be afraid of the trials and battles you will confront in life. If no one else supports you, do not lose faith for you can support yourself. Do not follow the crowd and live your life as a number. Stand out and make yourself known to the world; but, most of all, believe in yourself because that will ultimately provide you with peace and happiness.

I wish to end my speech with a dedication. It has been an extreme honor in my life to have been acquainted with a special person who always believed in me even when I failed to believe in myself. Unfortunately, my love and faith in him were not enough. It is important to understand that you must first love and believe in yourself before you can ever love and believe in anyone else. I want to dedicate my speech with a poem to Robin Jarmon Hall, who was born April 27, 1977, and died November 20, 1993. This poem, written by Robert Frost in 1916, was one of Rob's favorites, and it best describes the message I have tried to convey to you today.

***The Road Not Taken***

Two roads diverged in a yellow wood,
And sorry I could not travel both
And be one traveler, long I stood
And looked down one as far as I could
To where it bent in the undergrowth,

Then took the other, just as fair,
And having perhaps the better claim,
Because it was grassy and wanted wear,

Though as for that, the passing there
Had worn them really about the same,

And both that morning equally lay
In leaves no step had trodden black.
Oh, I kept the first for another day!
Yet knowing how way leads on to way,
I doubted if I should ever come back.

I shall be telling this with a sigh
Somewhere ages and ages hence:
Two roads diverged in a wood, and I—
I took the one less traveled by,
And that has made all the difference.

© 1994 Kathryn Sinclair; reprinted with permission. "The Road Not Taken" from *The Poetry of Robert Frost*, edited by Edward Connery Lathem.

1. Does Kathryn's speech violate her school's standards? Explain.

2. Under the *Hazelwood* ruling, does the First Amendment protect the content of Kathryn's speech? Explain.

3. Would the content of her speech be protected by the First Amendment under the Court's decision in *Tinker v. Des Moines School District*? Why or why not?

4. Why do you think Kathryn insisted that her speech not be changed?

5. Why do you think Kathryn's classmates were not tolerant of her?

6. What would you have done if faced with the same situation as Kathryn?

7. How does the First Amendment protect people who choose the road less traveled?



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# STUDENT HANDOUT 19

## Censorship and the Press

**Read the chapter "Freedom of the Press: A Cantankerous Press Must Be Suffered" in *The First Amendment: America's Blueprint for Tolerance* and answer the following questions.**

1. What means did the British government use to control the press?

2. Why would government leaders want to control the press? What kinds of ideas would they want to suppress? Whose interests might they be protecting?

3. What arguments can you make for protecting freedom of the press?

4. What is prior restraint? What arguments might the press make against it?

5. What values and interests might be endangered or exploited if there were no limits placed on the press?

6. What limits, if any, should the government be able to place on freedom of the press? Explain your position.

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# STUDENT HANDOUT 20

## Prior Restraint in Wartime

**Read the essay below, then work in your group to answer the questions that follow. Be prepared to discuss your responses with the entire class.**

The First Amendment ensures that the press has the right to investigate controversies and that the public has the right to know that information. Despite the importance of the public's right to know, sometimes it may be necessary to place limitations on freedom of the press. Many American men and women believe that because elected officials and other government employees are considered "servants of the people," citizens should have access to information on how the government is functioning. However, others have argued that in certain situations, the right to know and freedom of the press can conflict with other important values and interests.

For example, during the 1991 Persian Gulf War, a number of reporters complained that the Department of Defense was placing too many restrictions on the news media. Representatives from the Department of Defense explained their position. During the war, reporters were assigned to small groups or pools that had to be escorted by military officers at all times. They could only go where they were taken by the military. Reporters had to submit their stories to military officers for review before publication. If the military officers found information they thought might jeopardize the safety of U.S. soldiers or might aid the enemy, it was cut out of the stories.

A representative of the news media complained that the military was overly strict; he mentioned that during other wars, reporters were free to travel anywhere and report, with few exceptions, on whatever they deemed important. This was not the case in the Persian Gulf War. Members of the media said that the military's system did not allow reporters to gather information and report it properly. They argued that these limitations were a form of censorship. In addition, they said that American men and women, who were aware of these restrictions, were wary of believing what actually was printed. Even so, the restrictions continued as reporters complained about the violation of the freedom of the press.

1. What is the importance of American men and women's right to know how the government is doing its job?

2. What responsibility does the U.S. government have to make information available to the public?

3. What criteria should be used to determine how much control over information a government should have?

4. What complaints did the media have about access to information during the Persian Gulf War?

5. What restrictions were put on the media during the Persian Gulf War?

6. How do the interests of the military and the media sometimes clash during wartime?

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# STUDENT HANDOUT 21

## Case Study: *New York Times v. Sullivan* (1964)

**The Supreme Court ruled unanimously that, in cases where a public official is criticized for official conduct, errors of fact alone are not enough to prove libel. Instead, the official must prove that the error was made with "actual malice—that is, with knowledge that it was false or with reckless disregard of whether it was false or not."**

JUSTICE BRENNAN delivered the opinion of the Court. . . .

The general proposition that freedom of expression upon public questions is secured by the First Amendment has long been settled by our decisions. . . .

Thus we consider this case against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials. . . . The present advertisement [in the *New York Times* about racism in Alabama], as an expression of grievance and protest on one of the major public issues of our time, would seem clearly to qualify for the constitutional protection. The question is whether it forfeits that protection by the falsity of some of its factual statements. . . .

Authoritative interpretations of the First Amendment guarantees have consistently refused to recognize an exception for any test of truth, whether administered by judges, juries, or administrative officials—and especially not one that puts the burden of proving truth on the speaker. . . . The constitutional protection does not turn upon "the truth, popularity, or social utility of the ideas and beliefs which are offered." . . . As Madison said, "Some degree of abuse is inseparable from the proper use of everything; and in no instance is this more true than in that of the press."

That erroneous statement is inevitable in free debate, and that it must be protected if the freedoms of expression are to have the "breathing space" that they "need . . . to survive [is recognized by the courts]. . . .

A rule compelling the critic of official conduct to guarantee the truth of all his factual assertions—and to do so on pain of libel judgments virtually unlimited in amount—leads to . . . "self-censorship." . . .

Under such a rule, would-be critics of official conduct may be deterred from voicing their criticism, even though it is believed to be true and even though it is in fact true, because of doubt whether it can be proved in court or fear of the expense of having to do so. . . . The rule thus dampens the vigor and limits the variety of public debate. . . .

The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to

his official conduct unless he proves that the statement was made with "actual malice"—that is, with knowledge that it was false or with reckless disregard of whether it was false or not. . . .

1. What kind of public debate does Justice Brennan believe the First Amendment guarantees?

2. How would libel suits by public officials dampen this debate?

3. What legal standard does the Court set for libel suits by public officials?

4. What is Justice Brennan referring to when he says the ad in the *New York Times* is "an expression of grievance and protest on one of the major public issues of our time"?

5. In 1964, when *New York Times v. Sullivan* was decided, officials from southern states had filed libel suits of $300 million against the national press. What would have been the likely impact on the press as a whole if the *New York Times* had lost this case? What would the impact have been on the civil rights movement?

6. Consider the following quote, by *New York Times* reporter Anthony Lewis about Commissioner L.B. Sullivan, the Alabama official who sued for libel in this case: "Commissioner Sullivan's real target was the role of the American press as an agent of democratic change." What do you think Lewis meant? Do you agree? Explain.

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# STUDENT HANDOUT 22

## The United Nations Declaration on Tolerance

**Below are five statements that are part of the *UN Declaration on Tolerance*. Read each one carefully and then answer the questions that follow. Please be candid; say what you truly think. You should, however, be prepared to defend your opinion in a class discussion.**

**Take the second copy of this handout to someone outside of class and ask them to respond to the same questions. They could be other members of your family, a friend, someone in your neighborhood, and so forth. Select someone that you are quite sure will be willing to help you out. All answers can be short.**

*People need their beliefs. But today a new form of solidarity is required, a life more closely bound up with others, and we must therefore take greater care than ever before to ensure that our convictions do not lead to patterns of behavior which exclude others.*

1. Do you agree with the conclusion drawn by this statement? Why or why not?

2. Are you optimistic that people in the world will not allow their convictions to exclude others? Explain.

*We are aware that we all have a responsibility for a better planetary order, that involvement for the sake of human rights, freedom, justice, peace, and the preservation of the earth is possible and necessary; that our different religious and cultural traditions must not prevent our common involvement in opposing all forms of inhumanity and working for greater humaneness; . . .*

1. Do you agree with the message in this statement? Why or why not?

2. Do you think that people in the world will put aside different religious and cultural traditions to oppose all forms of inhumanity and will work for greater humaneness? Explain.

*There is no alternative to tolerance, which, while by no means solving all the problems, can enable us to tackle them in a spirit of open-mindedness, progress, and peace.*

1. Do you agree with this message? Why or why not?

2. Can tolerance enable us to tackle problems with an open mind? Do you think people in the world are tolerant enough to attempt tackling the world's problems in a spirit of open-mindedness, progress, and peace? Explain.

*Tolerance on the part of each and every one means an attitude devoid of arrogance in relations between the generations, the sexes, individuals and communities, and between the human race and nature.*

1. Do you agree with this definition of tolerance? Explain.

2. Do you believe that tolerance for nature should be included in this declaration? Why or why not?

*Different peoples must be encouraged to learn about one another . . . in order to avoid tenacious prejudices and ingrained stereotypes.*

1. Do you agree with the thought in this sentence? Why or why not?

2. Can people in the world put aside prejudices and stereotypes if they know more about each other? Explain.

*Tolerance must be the new name of peace.*

1. Do you agree with this statement? Why or why not?

2. How can tolerance stimulate peace?



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# RESOURCES

For additional resources on tolerance, the following organizations may be helpful.

1. The Museum of Tolerance in Los Angeles, California, has educational exhibits and materials about the Los Angeles riots, discrimination against minority groups, and the Holocaust. For more information, contact:

   Museum of Tolerance
   9786 W. Pico Boulevard
   Los Angeles, CA 90035
   310-553-8403

2. The Southern Poverty Law Center publishes a magazine, *Teaching Tolerance*, that provides case studies, idea exchanges, and classroom activities free of charge to educators. Contact:

   *Teaching Tolerance*
   400 Washington Avenue
   Montgomery, AL 36104
   205-264-0286

3. Fostering tolerance is a beginning step toward reducing violence in the schools. Another step is establishing peer mediation programs. The Illinois Institute for Dispute Resolution has developed a particularly successful model for mediation programs in schools. Contact:

   Illinois Institute for Dispute Resolution
   301½ West Cook Street
   Springfield, IL 62704
   217-523-6080

4. If you would like to teach your students conflict resolution skills, but do not have the resources to establish an ongoing peer mediation program, try using a mock mediation format—similar to a mock trial. *We Can Work It Out!* by Judith Zimmer is a manual that offers lesson plans, handouts, and mock mediation scenarios designed to give students experience in cooperative problem solving. Contact:

   National Institute for Citizen Education in the Law (NICEL)
   711 G Street, S.E.
   Washington, DC 20003-2861
   202-546-6644

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